

**DEPARTMENTS OF VETERANS AFFAIRS AND  
HOUSING AND URBAN DEVELOPMENT AND  
INDEPENDENT AGENCIES APPROPRIATIONS  
FOR FISCAL YEAR 2005**

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**THURSDAY, MARCH 25, 2004**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10 a.m., in room SD-628, Dirksen Senate Office Building, Hon. Christopher S. Bond (chairman) presiding.

Present: Senators Bond, Craig, Domenici, Mikulski, and Leahy.

**ENVIRONMENTAL PROTECTION AGENCY**

**STATEMENT OF MICHAEL O. LEAVITT, ADMINISTRATOR**

**ACCOMPANIED BY:**

STEPHEN L. JOHNSON, ACTING DEPUTY ADMINISTRATOR  
BENJAMIN H. GRUMBLES, ACTING ASSISTANT ADMINISTRATOR,  
OFFICE OF WATER  
PAUL GILMAN, ASSISTANT ADMINISTRATOR, OFFICE OF RE-  
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## OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Good morning. The subcommittee will come to order. My apologies. Due to the elevator service around here, we are running a little bit late.

Senator Mikulski has another hearing, which she has to attend briefly, but I am going to get started, because it looks like we have a number of members here. This morning, the VA-HUD Independent Agency Subcommittee will conduct its hearing on the fiscal year 2005 budget request for the Environmental Protection Agency.

It is a pleasure to welcome Governor Michael Leavitt, Administrator of the EPA to this subcommittee to testify on the President's Budget request for fiscal year 2005.

Governor Leavitt, since this is your first appearance and only your fourth month on the job, I look forward to hearing your initial impressions of the Agency and its mission.

We thank you very much for being here today, and assure you that the EPA is one of the most important and difficult missions of all the Federal agencies. The jurisdiction ranges from clean up of Superfund and Brownfield sites to funding clean water and drinking water infrastructure programs, as well as the very important enforcement of environmental laws.

A presidential directive issued in December 2003 continues to identify the EPA as the lead agency in protecting our Nation's water infrastructure from terrorist attacks. I think the EPA has provided strong leadership thus far within the Federal Government regarding critical homeland security issues. There is much more to be done, and we will have some ideas that will be considered for legislation in that area.

Not to put a damper on this morning's proceedings, but before I delve into the budget request for EPA for the coming year, I should notify you and everybody else that we are operating in a very tight budget year. This subcommittee, in particular, faces a very steep challenge, with substantial funding shortfalls for a number of key programs within our jurisdiction, including VA Medical Care, Section 8 Housing Assistance, and EPA Clean Water State Revolving Fund.

Before we get this bill off the floor, we are going to have to address all of those, and that means, given the tight budget we have, that other things are going to be very difficult to fund.

The administration has asked for an almost \$900 million increase for the NASA budget in fiscal year 2005 in order to implement a very ambitious and costly redirection of resources for future manned missions to the moon and Mars.

It is obvious that we are going to have to make some tough decisions, and we look forward to working with you, as members of this committee, and for your findings going forward.

The administration requested \$7.76 billion total budget authority for the coming year. This is a \$606 million decrease from the fiscal year 2004 enacted level.

As with other funding shortfalls in the jurisdiction of this subcommittee, the 7 percent reduction in EPA funding concerns me greatly, particularly in places where OMB took the money out.

In particular, in both my role as the chairman of the VA-HUD Appropriations Subcommittee and as a member of the Committee on Environment and Public Works, I have made investments in our Nation's water infrastructure a priority. I can assure you that my colleague, Senator Mikulski, feels the same way. Unfortunately, OMB, once again, didn't get the message. They have proposed reducing the Clean Water State Revolving Fund from \$1.35 billion in 2004, to \$850 million in 2005, a reduction of nearly \$500 million below the fiscal 2004 enacted level. That just isn't going to work. I am pleased that OMB has at least maintained a level request of \$850 million for the Drinking Water SRF in 2005.

Eight hundred fifty million dollars for the Clean Water SRF is simply not enough. I cite the EPA's own document, Clean Water and Drinking Water Infrastructure Gap Analysis published in 2002, indicating a substantial gap in funding will develop even if the Nation's current clean water/drinking water systems maintain current spending levels.

The Gap Analysis estimates that the United States will need to spend \$450 billion—billion dollars in capital needs for clean water and drinking water in the next 20 years. I think we need to find additional resources and perhaps new approaches to address these important needs. Nevertheless, at a minimum, we need to maintain funding for both of these revolving funds, at least at the current year's level.

I am also interested in the most prominent air quality issue in the last few months, which has been what to do about emissions from coal-fired electric power plants.

The administration has proposed changes to New Source Review, and has asked Congress to modify the Clean Air Act requirements for power plants by passing Clear Skies or multipollutant legislation. Further, EPA proposed a rule permanently to cap and reduce mercury emissions from power plants. I congratulate the administration on submitting both legislation and regulations which seek to maintain the economic viability of U.S. energy producers, while meeting the air quality standards of the Clean Air Act; nevertheless, this will remain an area of great concern and controversy where, despite continued improvements to the quality of our Nation's air, as of December 2002, some 107 areas, with a combined population of almost 100 million people, were classified as non-attainment areas for one or more of the national ambient air quality standards.

I look forward to your leadership in this area. We are obviously going to have to develop new technologies to deal with this problem, because we cannot afford misguided Federal policy forcing coal out of our electric generating capacity, using instead natural gas, because natural gas is a vital component. The excessive demand imposed on our natural gas supplies by providing new electric generating only from natural gas has resulted in a significant problem.

This high price and limited supply of natural gas is outsourcing natural gas industry jobs from the United States. Make no mistake about it, we are driving jobs out of the United States, because natural gas is in such short supply. Industries are moving overseas and taking their jobs with them because other countries do not ar-

tificially inflate the demand for natural gas and constrict the supply.

We are hearing about a number of new possible means of developing clean burning coal. I have been presented information on electrocatalytic oxidation technology, which has the potential for reducing all these pollutants at less cost and less environmental damage than the current scrubbers, but make no mistake about it, we have 250 years supply of coal. We've got to learn how best to do it.

EPA also faces significant challenges in cleaning up the 1,240 Superfund sites on the National Priorities List (NPL), and the 65 sites proposed to make the NPL.

The administration is requesting \$1.381 billion for the Superfund program in fiscal year 2005, which is \$124 million above the fiscal year 2004 level. The bulk of the \$124 million increase will be used for additional construction starts. There is no question, the Superfund program could use increased funding of clean-up sites currently on the NPL, and those waiting to make the list.

Last year, I pointed out that only 16 percent of the funds in the Superfund program go to cleaning up sites. And I have asked in the last year's Senate report that the EPA find out how we could put more money into cleaning up. I know there has to be money for enforcement, and that provides money for the cleanup, but I look forward to working with you to find out how we can make sure that these dollars we appropriate for Superfund are actually cleaning up the Superfund sites. Failure to do so is causing significant problems in the Superfund program.

I hope EPA will make every effort to allocate the resources within the Superfund program with a goal of both diminishing immediate health risks to the communities surrounding these hazardous sites, and completing construction as swiftly as possible.

I note that an internal review of the Superfund program is taking place currently at the EPA to determine whether resources are being used efficiently. I look forward to being briefed on the results of this review. Governor, I look forward to working with you on ways to make this program more efficient.

I plan to introduce an Environmental Enforcement and Security Act of 2004 within the next several days. The legislation is intended to address concerns raised by a recent EPA Inspector General report, internal EPA reviews, and numerous press reports that EPA is straining to meet its environmental enforcement duties and its new post-9/11 Homeland Security responsibilities.

I think that the EPA's efforts should be funded from the robust Homeland Security budget, because it doesn't look like we're going to have the resources we need with our budget allocation to get the job done solely in this Committee.

The bill would authorize additional funds to add 50 new criminal enforcement agents and 80 new Homeland Security special agents. It would authorize EPA to fund \$100 million in grants for physical security measures to protect our Nation's water systems. Again, I think much more will need to be done but I am concerned that we first need a comprehensive assessment of our water infrastructure security needs, and then a comprehensive plan that will ensure the necessary funds will be used effectively and efficiently.

Finally, I want to turn to a critical issue, to jobs, very briefly. Last year we had an issue, with proposed California air regulations to require catalytic converters on all small engines. This would have raised significant safety concerns, because the Fire Marshal's Fire Chiefs, even in California, said that a 1,100 degree catalytic converter on a leaf blower, chain saw, or lawn mower causes significant fire danger.

We added an amendment that would say to EPA: Before you approve California's rule, you must take into consideration the safety concerns. But beyond that, and just as important, we believe that the EPA could achieve the goals sought by the California Air Regulation Board, and do it on a nationwide basis by proposing an effective, workable rule for all small engines.

Were the California Air Resources Board regulation to go into effect nationwide, it would outsource 22,000 jobs that would be moved to China the next day as the small engine manufacturers had to build new plants, and they would build them in China, not in the United States. We don't need another governmental forced outsourcing of jobs.

So, Governor, I ask that the EPA pay special attention to this, make sure we clean up the air, but don't drive jobs out of the country as we do it.

With that, I normally would turn to my Ranking Member, and I would ask our distinguished Senator from Vermont if he would be kind enough to allow me to allow Senator Craig to go forward. He has another commitment. If he is brief, can you—

Senator LEAHY. First, I would be happy to say that Senator Craig was here earlier than I was. I would be happy to do that, but I do have a statement afterward.

Senator BOND. We are looking forward to your statement. We don't want you to be rushed.

Senator LEAHY. The Governor is looking forward to my statement.

Senator BOND. Let me turn to Senator Craig.

#### STATEMENT OF SENATOR LARRY CRAIG

Senator CRAIG. Mr. Chairman, thank you very much. Governor, Administrator Leavitt, welcome before the committee. First of all, again, let me publicly thank you for taking this position. It is a very difficult one to have in any administration because of the level of expectation of the American people as it relates to our environment, and the reality of implementing those expectations. I think our chairman has just spoken to some of that.

I handed him, while he was talking about gas costs and clean air, and driving this country to use gas generation, and then not allowing us to produce that gas, especially out in your part of the country, and in my part of the country, the Industrial Energy Consumers of America Report came out a couple of days ago.

In the last 46 months, compared with the prior 46 months, because we are not producing gas, we are denying offshore development, onshore development all in the name of the environment, while demanding gas be used all in the name of the environment. This is an interesting statistic.

The 46-month natural gas crisis has cost U.S. consumers \$130 billion. How in the world can we get an economy going, and everybody wants that to happen, when we are sucking it dry of the resources necessary because we are demanding more for gas?

And that breaks down, it is interesting, to industrial consumers \$66 billion more, residential consumers \$39 billion more, and commercial consumers \$25 billion more.

In your State of Utah and my State of Idaho, that means that the average farmer's cost of production, as an input cost, will go up 30 percent this year. His fertilizer has gone up 100 percent. Production of food will drop in our country as a result of that.

And guess where those farmers will come? Here, to their Nation's capital, to get help. I talked with a banker in Idaho yesterday with substantial farm loans, he has called all of his branch banks and said: You will need to anticipate increasing your lines of credit to your agricultural producers by at least 25 to 30 percent this year just to offset the cost of energy.

Shame on us, the Congress of the United States, for standing in the way of production in this country in many instances fallaciously in the name of the environment.

Have you got a job to do? Oh, yes, you have, but so do we, and we haven't done it.

Am I passionate about this? Yeah, when it runs people out of business, when we are using gas for electrical generation, and it ought to be used for heat, one of the most inefficient ways to use gas, but the Clean Air Act drove everybody there, and then we shut down production. Dumb us. But that is the reality of where we are.

I don't know that I could get anymore passionate about it, and if you want to hear more, I'll be happy to deliver. Point made.

Beyond that, a couple of other issues you'll face, Governor, as you work. They are not just Western issues, but in many instances, they are unique to the geology of the West.

It's a little thing called arsenic in drinking water, and drinking water standards. Now, I know that these new standards you've inherited, but in your State of Utah, and in my State of Idaho, where the geology oftentimes finds itself ingrained in decaying granitics and granitic structures, arsenic levels are oftentimes extremely high.

A little community of Castleford, Idaho, just across the border from Utah, is going to see its compliance costs go up three times its entire city budget just to comply, and it can't, and it won't, unless we help them. And right now with the budget the chairman has talked about, we can't help them. It just so happens the people in Castleford have one of the longest lifespans of any city in our State. Many live there into their 90's, but they've been drinking high arsenic levels all of their lives because it is natural in the water of that community.

But we got awfully smart here in the emotional politics of the word "arsenic," instead of the reality of the science, and now the science is coming in, and I would suggest that the science does not support the standards. But touch it politically, how dare us? Watch the yelling on the floor of the United States Senate, and the headlines if you dare touch that, Mr. Administrator.

That is the reality we face, and that is true in Idaho, Utah, across the United States. We have asked these communities to do something they cannot do. And the question is do they need to do it?

We have not even stopped to ask that, we've just made that political assumption, and not a scientific assumption.

Lastly, the Chairman talked about Superfund. We've got a big Superfund site in north Idaho. We battled that issue for years. EPA has gone out there, and their people have taken residence hoping they could continue to live in that beautiful area where the Superfund site is until their kids graduate from college.

The only problem is some of them came with 4- and 5-year-olds, and so they want to stay for a long time. It is the most beautiful part of our State, and it is unique that it is a Superfund site, because of the heavy metals that are a product of the old mining era.

I believe they phoned the science, and as a result of that I got an appropriation with the help of this committee, we have the National Academy of Science out there now in an impartial way reviewing the science. Watch us. Watch the National Academy, Mr. Administrator. I think it might be a lesson learned as it relates to the application of Superfund.

Oh, yes, we have some problems, and, oh, yes, they ought to be cleaned up. But largely the work is done out there, and Mother Nature is now doing a better job in her recuperative powers than is the human; but yet \$400 million still wants to be spent by those who want to continue to work there until their kids are through college, \$400 million of moving earth around, and disturbing the environment beyond what man had already disturbed. It really is an issue that ought to be addressed.

The prior administrator, Ms. Todd Whitman, did the right thing, and did a unique thing, she developed with us a cooperative management relationship between EPA and the State of Idaho so that we think we can get greater efficiencies than if it is simply prolonged and prolonged and prolonged by the Federal bureaucracy.

We hope we can accomplish that. We think we will, and will need your help. At the same time, goodness sakes, we need a lot of common sense applied to areas where it doesn't exist. That is why we've asked the National Academy to come in, and we asked EPA to stand down while we review their science to determine whether they are right, or whether they are wrong, or if it simply fits the agenda of somebody who would like to continue to live in that beautiful part of the country.

Thank you. Glad to see you. Lots of challenges, little resource to do it with. Good luck.

Senator BOND. Thank you very much, Senator Craig. I should have noted, when we were talking about natural gas, it is not only the cost of energy, but the first number in the three-number fertilizer, the end number, comes from natural gas we are seeing, we are seeing costs of fertilizer going up—I buy several hundred pounds, and it is a small amount I buy, I see the tremendous increase in the cost of fertilizer because of natural gas prices.

And natural gas-using consumers all across the Nation are being hit with huge natural gas bills for heating this year because of the natural gas constricted supply and increased demand.

But with that, now let me turn to our friend from Vermont. Senator.

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Thank you, Mr. Chairman, and I have—Governor, I have been looking forward to this hearing. I am sure you have, too. Thank you for coming. You probably find that we are not all in total agreement on this committee. You understand the personal friendships of those of us who are here.

I do want to start off by thanking you for recognizing the importance of Lake Champlain by including it in EPA's budget proposal. Lake Champlain is the largest body of fresh water in this country outside of the Great Lakes. It is a beautiful spot. I invite you to come up and visit any time you'd like.

Cleaning it up has been one of my top priorities and one of Vermont's top priorities, Governor.

There are different political parties, but we stand shoulder to shoulder in our efforts to clean it up, and I think I could speak for him, too, and say thank you for including it in the budget.

I also applaud you for the tone you set assuming your duties at EPA. Tones are important anywhere. For us, the actual notes can sometimes be even more important than the music. We talked about the Clean Air Act. I was here when it was first put together, and it was a bipartisan effort.

You had Republicans like Senator Stafford of Vermont and other lead members of the Republican party, and of the Democratic Party working closely together on a series of compromises to pass the Bill. Today, I am concerned that the administration is trying to roll back the Clean Air Act, and to let large pollutants off the hook when it comes to toxic emissions like mercury.

My concerns, if these rollbacks succeed, are that we will undermine not only decades of work restoring Lake Champlain, but countless other rivers, lakes and streams all over the country. And there is, as you have seen in the press, heard on the news, there is a strong bipartisan and growing outcry about the administration's latest retreat from the Clean Air Act in your mercury proposal.

And these concerns are moving so swiftly, they may reach critical mass here on Capitol Hill. Let me give you this chart, and this is why the objections are so strong. You could see in the dark red, it shows mercury levels across the country.

Now, this is an EPA chart. The top level, of course, is Canada. Here in Vermont, Maine, New England, you can barely see us. You can't even see Vermont. We, in the Northeast, have been a dumping ground for coal-fired power plants in the Midwest. We have been that way for decades.

In drafting the Clean Air Act, the idea was to work out a series of grandfather clauses so that the Midwest power plants would have time to improve and cut down emissions. Well, now, we see what has happened.

We all believe in family values, I know you do, I do, but it's not a family value to tell a pregnant woman that the mercury level may be too high for the child she is bearing. And for those of us who have children and grandchildren of a young age, they're devel-



oping their neurological systems and the mercury level that may possibly be safe for you or for me is not for them. These are not family values.

And the EPA's new proposal to reduce mercury emissions from these plants was supposed to bring power plants into the 21st century, and clean up their emissions. It doesn't do that. It falls far short of what is possible and what is necessary. There has been a lot of public relations efforts to convince Americans that more mercury in their water, food and environment over a long period of time is the best we could do. That doesn't work.

All you have to do is pick up any newspaper in this country, any article, or turn on the TV, turn on the radio, and see the concerns about mercury.

What has come up is the fact that this administration's close collusion with polluting industries in devising its policy on mercury. This raises serious concerns. Most of these things happened before your tenure, but I'm raising this now. I'll be very blunt, I think the administration has a credibility problem on its approach to the Clean Air Act and to mercury pollution.

Look at the new warnings about mercury risk from tuna, increasing numbers of pregnant women with unsafe mercury levels, and newborns with high mercury levels. Now, this is bringing about a real strong public demand for action. Mercury is the last major toxin without a containment plan.

I remember back when we talked about removing lead from gasoline, we heard more dire predictions from energy companies, from everybody else involved. Well, we did it. It turns out it was one of the smartest environmental steps we've ever taken.

If we don't do something now to cut mercury emissions quickly, we will look back years from now and ask why we let polluters off the hook for so long.

I am very troubled by what has come forward now about the number of things in the mercury proposal that were written by industry, not by EPA. You've got an industry-ghostwritten, scientifically unjustifiable policy on mercury. Thank you, Mr. Chairman.

Senator BOND. Thank you very much, Senator Leahy. Now, Mr. Administrator, our policy is to accept your full written statement for the record, which we appreciate receiving, and we would ask you to highlight those points that you think are particularly appropriate. I commend you and your administration for taking the steps for the first time to do something about mercury, and I know you have many positive thoughts to share with us, and we would welcome your oral testimony. Thank you, sir.

#### STATEMENT OF MICHAEL O. LEAVITT

Administrator LEAVITT. Thank you, Mr. Chairman, and Members of the committee. We are delighted to be here today to present the President's fiscal year 2005 budget. I will be brief, because I am anxious to get to the discussion. I am interested in pursuing the discussion that the Senator from Vermont, Senator Leahy, raised with respect to mercury, and there is some interest and passion for me as well. I'm interested to share my thoughts with you, and hearing more of yours.

The President's given me a fairly direct responsibility. He told me to clean the air, purify the water, make certain that the land was better cared for, but he told me to do it in a way that would preserve the economic competitiveness of this country. I——

Senator BOND. I think there is an old joke about the alternative is to build a bridge to Hawaii, and that is an easier task.

Administrator LEAVITT. It is not without challenges, but I am also persuaded that it is achievable. I have been reviewing recently the material that will be used in the celebration of this agency's 34th anniversary. It was formed on Earth Day in 1970. Since that time, this country has seen substantial environmental progress and economic progress.

The pioneers of this environmental movement used a command and control strategy that may have been the only way at that point to move the country toward environmental progress. But today in my testimony, you'll hear a mantra that we are using at the Environmental Protection Agency: to find a better way.

We believe a better way is when we use technology to change the equation from what before was improbable to what now is possible. A better way is when we use market incentives to speed the acceptance of new and higher standards. We think a better way is when we use collaborative network building to solve problems, like some of those that you have spoken of today.

A better way is when we focus on results, and not just rewarding programs. Markets, technology, building collaborative networks, focusing on results, that is what you'll hear from me today. I will use illustrations, like the Interstate Air Quality Rule that has been mentioned already, a 70 percent reduction on NO<sub>x</sub> and SO<sub>x</sub>, and I'll talk about the Nation's first effort ever to regulate mercury from power plants, the largest source, and using a better way to do that.

#### PREPARED STATEMENT

Again, you'll find me today representing the Agency's objective to increase the velocity in environmental progress, but to do it in a way that will maintain our Nation's economic competitiveness, and I look forward to the discussion.

[The statement follows:]

#### PREPARED STATEMENT OF MICHAEL O. LEAVITT

Mr. Chairman and members of the committee, I am pleased to be here to discuss President Bush's fiscal year 2005 budget request for the Environmental Protection Agency. The President's fiscal year 2005 budget request of \$7.8 billion provides funding necessary for the Agency to carry out our mission—to protect human health and safeguard the natural environment—efficiently and effectively. Given the competing priorities for Federal funding this year, I am pleased by the President's commitment to human health and environmental protection.

I would like to begin, Mr. Chairman, by emphasizing that the President's budget request for EPA reflects the Agency's commitment to cleaning our air, cleansing our water, and protecting our land efficiently and effectively, while sustaining economic growth. The request promotes EPA's goals by facilitating collaboration, harnessing leading-edge technology, and creating market-based incentives for environmental protection.

This Agency remains committed to working with our geographic and regional partners and focusing on our core programs to protect human health and the environment. Of the \$7.8 billion budget, \$4.4 billion—the highest level in EPA history—is devoted to the Agency's core regulatory, research, and enforcement activities, and

State program grants. The President and I both believe that enhancing EPA's core programs is a vital part of effective environmental management and stewardship. Our budget request reflects that.

As EPA continues to carry out its mission, I look forward to building upon a strong base of environmental progress. This budget, Mr. Chairman, will enable us to carry out our principal objectives while allowing us to react and adapt to challenges as they arise.

#### CLEAN AIR AND GLOBAL CHANGE

The fiscal year 2005 President's Budget requests \$1.0 billion to fund our clean air and global change programs, thereby helping to ensure that air in every American community will be clean and safe to breathe. The budget includes a large increase for EPA's Clean School Bus USA grant program to \$65 million for projects that reduce diesel emissions from school buses through bus replacement or retrofitting. Clean School Bus USA helps ensure that school children have the cleanest transportation possible. This program is an additional tool for communities to develop localized solutions for environmental protection to meet new air quality standards for particulate matter.

This budget also supports the President's Clear Skies initiative, which draws on EPA's experience to modernize the Clean Air Act. Clear Skies legislation would slash emissions of three power plant pollutants—nitrogen oxide, sulfur dioxide, and mercury—by 70 percent. Such emissions cuts are an essential component of improving air quality and thus environmental and human health. The Clear Skies initiative would build upon the 1990 Clean Air Act's acid rain program by expanding this proven, innovative, market-based approach to clean air. The power plant reductions required under Clear Skies and our new diesel engine regulations will bring most of the country into attainment with the new ozone and PM air quality standards: by 2020, only 27 counties out of 263 will need to take further steps to be in attainment for ozone; only 18 counties out of 111 will need to take further steps to be in attainment for PM. Such a program, coupled with appropriate measures to address local concerns, would provide significant health benefits even as energy supplies are increased to meet growing demand and electricity rates remain stable. I look forward to working with you, your fellow members of Congress, and the President on this landmark legislation. Next month, I will formally designate counties that will be out of attainment with the new ozone standards; in December, I will formally designate counties that will be out of attainment for particulate matter. These designations start the clock ticking on the often controversial and resource-intensive State planning process. By 2007, States must have plans to get into attainment approved by EPA. So, the budget would also support the Interstate Air Quality Rule we proposed in December and intend to finalize this year. This rule is similar to Clear Skies in that it requires an approximate 70 percent reduction in sulfur dioxide and nitrogen oxide from the power sector. However, due to authority under the Clean Air Act, its reach is limited to States in the eastern half of the United States that contribute pollution to neighboring States. Although this rule would allow us to take an enormous step forward in providing cleaner air across much of the country, it would not do so as fast or as effectively as would Clear Skies.

EPA's request for clean air programs includes \$313 million for clean air grants to support our collaborative network of States and Tribes. These resources will assist States, Tribes, and local governments in devising additional stationary and mobile source strategies to reduce ozone, particulate matter, and other pollutants.

The clean air and global change request also includes \$130 million to meet our climate change objectives by working with business and other sectors to deliver multiple benefits while improving overall scientific understanding of climate change and its potential consequences. The core of EPA's climate change efforts are government/industry partnership programs designed to capitalize on the tremendous opportunities available to consumers, businesses, and organizations to make sound investments in efficient equipment and practices. These programs help remove barriers in the marketplace, resulting in faster deployment of technology into the residential, commercial, transportation, and industrial sectors of the economy.

#### CLEAN AND SAFE WATER

In fiscal year 2005, this budget requests over \$2.9 billion for its water programs. EPA's fiscal year 2005 budget focuses on four strategies toward achieving the Nation's clean and safe water goals. To better address the complexity of the remaining water quality challenges, EPA will promote local watershed approaches to execute the best and most cost effective solutions to local and regional water problems. To

protect and build on the gains of the past, EPA will focus on its core water programs. To maximize the impact of each dollar, EPA will continue to strengthen vital partnerships and collaborative networks with States, tribes and local governments, and others in working to achieve our shared goal of improving the Nation's waters. To leverage progress through innovation, EPA will promote water quality trading, water efficiency, and other market based approaches.

The budget makes a significant investment in a new water-quality monitoring initiative to solve water quality monitoring problems. Through this investment, EPA can make the most of scarce resources through information-based management, using tools such as prevention, source water protection, watershed trading, and permitting on a watershed basis. Monitoring is the foundation of information-based management and it is imperative that the data and information gaps be closed as quickly as possible. The budget provides a total of \$20 million to strengthen State and tribal water quality monitoring programs, improve data management systems and improve monitoring tools. Of that amount \$17 million in grants provides direct assistance to States and tribes. Three million dollars of this funding will provide technical assistance to help States and tribes develop statistically representative water quality monitoring programs, a tool that will eventually allow EPA to make a national determination of water quality and ensure resources target the highest priority problems.

States are struggling with implementation of the National Pollution Discharge Elimination System (NPDES) permitting programs, as demonstrated by withdrawal petitions and permit backlogs. Compounding the problem is that the regulated universe increased tenfold due to new requirements for concentrated animal feeding operations and storm water runoff. The Agency requests a \$5 million increase in Section 106 Grants to help States issue timely and effective NPDES permits. By providing additional resources in the form of State grants, EPA will help States and tribes meet obligations under the revised rule and help reduce pollutants and make necessary improvements in water quality.

EPA is also advancing water quality trading in voluntary partnerships on a watershed basis. It capitalizes on economies of scale and cost differences among sources. Trading allows one source to meet its regulatory obligations by using pollutant reductions gained by another source and provides incentives for voluntary reductions at a reduced cost to all. It provides an opportunity for innovative solutions to complex water quality problems. To encourage the implementation of water quality trading programs, the budget includes \$4 million in the Targeted Watersheds Grants program.

The President's Budget continues its commitment to help provide affordable financing for States' water infrastructure needs. The Budget provides \$850 million for the Clean Water State Revolving Fund, which will ultimately result in a \$3.4 billion long term revolving level, helping communities across the country clean up their wastewater. It also provides \$850 million for the Drinking Water State Revolving Fund, resulting in a long term revolving level of \$1.2 billion and protecting public health. However, growing populations are increasing demands on water resources, and addressing these demands, along with the Nation's multi-billion dollar water infrastructure gap, will require creative solutions at the local, State and Federal level. As part of a long-term strategy to develop sustainable infrastructure EPA will work in partnership with States, the utility industry and others to enhance operating efficiencies and mitigate infrastructure needs by encouraging efforts to reduce water demand and wastewater flows, potentially downsizing capital needs. High priority activities in support of this effort include a new water efficiency labeling program and a sustainable infrastructure initiative that will promote best practices such as full cost pricing.

#### LAND PRESERVATION AND RESTORATION

This budget continues EPA's commitment to clean up toxic waste sites with \$1.4 billion for Superfund. This reflects a \$124 million increase over the fiscal year 2004 appropriated level for Superfund's remedial program, which will allow for 8-12 additional construction starts in 2005 and a similar number of additional completions by 2006. As of January 2004, cleanup construction projects were underway or complete for over 93 percent of National Priority List (NPL) sites.

The President's Budget also includes an additional \$26 million to strengthen EPA's partnership with States to monitor underground storage tanks. Recognizing that States have primary responsibility for monitoring tanks, issuing permits, and enforcing regulations, the additional grant money will provide funds for States to inspect a larger universe of federally regulated underground storage tanks on a more frequent basis.

## PROTECTING AMERICA'S COMMUNITIES AND ECOSYSTEMS

EPA is committed to building and enhancing effective partnerships that allow us to safeguard human populations and ecosystems across America. To help protect and restore land-based ecosystems, this budget provides \$210.7 million, over \$40 million more than the level provided in the fiscal year 2004 Consolidated Appropriations bill, for the Brownfields program, one of the administration's top environmental priorities. The Brownfields program will draw on these additional resources to provide grants to State and Tribal partners to fund cleanup of lightly contaminated sites. By protecting land and revitalizing contaminated sites throughout the United States, EPA continues to expand efforts to foster healthy and economically sustainable communities and attract new investments to rejuvenated areas.

EPA's budget requests resources to protect individual ecosystems across the country, including a total of \$30 million for the Chesapeake Bay. Ten million dollars of this total will be provided through the Targeted Watersheds Program for a pilot program to help municipalities reduce nutrient discharges to the Bay through collaboration with nonpoint sources. EPA's collaborative partnership in Chesapeake Bay protection, which serves as a model for similar endeavors, includes Maryland, Virginia, Pennsylvania, the District of Columbia, the Chesapeake Bay Commission, and participating citizen advisory groups.

The Great Lakes are the largest system of fresh surface water on Earth, containing roughly 18 percent of the world's supply. The Great Lakes basin also is home to more than one-tenth of the population of the United States, one-quarter of the population of Canada, and heavy concentrations of industry. Over the years, industrial development has contaminated sediments throughout large areas of the lakes with toxics such as polychlorinated biphenyls (PCB's) and heavy metals, putting large populations and the tremendous water resource at risk. EPA's Great Lakes Legacy program provides funding to remediate contaminated sediments, keeping them from entering the food chain where they may cause adverse effects to human health and the environment. In 2005, this administration will demonstrate its commitment to the health and well-being of the region and its citizens by proposing to fund the Great Lakes Legacy program at \$45 million, nearly five times greater than previous levels.

To ensure that the American public will continue to enjoy one of the safest and most affordable food supplies in the world, the President's budget continues to meet implementation challenges of the Food Quality Protection Act (FQPA). The Agency's implementation of FQPA focuses on science-driven policies for pesticides review, seeks to encourage the development of reduced risk pesticides to provide an alternative to the older versions on the market, and works to develop and deliver information on alternative pesticides/techniques and best pest control practices to pesticide users. The Agency is also working to help farmers' transition to safer substitutes and alternative farming practices while minimizing production disruptions. Reassessing existing tolerances ensures food safety, especially for infants and children, and ensures that all pesticides registered for use meet current health standards.

## COMPLIANCE AND ENVIRONMENTAL STEWARDSHIP

This budget also requests \$751 million to promote and insure compliance with environmental laws, and to foster and support the development of pollution prevention strategies and innovative approaches to environmental protection. Since EPA's inception over 30 years ago, many environmental improvements in our country can be attributed to a strong set of environmental laws, and to our efforts to ensure enforcement of those laws. The Agency uses a "smart" enforcement approach, employing a mix of compliance assistance, incentives and monitoring strategies, supported by strong, effective civil and criminal enforcement and litigation teams. This "smart" approach maximizes the use of the Agency's resources and personnel, and allows us to quickly and effectively adapt both to emerging environmental threats and to changes in law and policy.

The President's fiscal year 2005 request also continues to support results-based, innovative, and multimedia approaches to pollution prevention and natural resource conservation by government, industry, and the public. Increasingly, Americans are recognizing the value of their own pollution prevention efforts, and the contributions made through sustainable business practices, to the preservation and restoration of community and national environmental resources. In addition, EPA will continue to support initiatives targeted toward improving compliance at public and private facilities, empowering State and Tribal environmental programs, encouraging corporate stewardship, and better informing the public.

## STRONG SCIENCE

Sound science is a fundamental component of EPA's work. The Agency has long relied upon science and technology to help discern and evaluate potential threats to human health and the natural environment. Much of our decision-making, policy, and regulatory successes stem from reliance on quality scientific research aimed at achieving our environmental goals. In fiscal year 2005 EPA will strengthen the role of science in decision-making by using sound scientific information and analysis to help direct policy and establish priorities. This budget request includes \$572 million for the Office of Research and Development to develop and apply strong science to address both current and future environmental challenges. These resources support a balanced research and development program designed to address administration and Agency priorities, and meet the challenges of the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Food Quality Protection Act (FQPA), and other environmental statutes. The budget request includes important new or increased research efforts in the following areas: computational toxicology, data quality, and EPA's Integrated Risk Information System (IRIS)—an EPA database of Agency consensus human health information on environmental contaminants.

## ACCELERATING ENVIRONMENTAL PERFORMANCE

To further promote environmental stewardship with localized solutions, the Agency requests \$1.25 billion, the highest level ever, for categorical grants to support core State and Tribal environmental programs. A new State and Tribal Performance Fund provides \$23 million in competitive grants to develop projects with tangible, performance-based environmental and public health outcomes that can be models for implementation across the Nation. The administration believes that the best way to ensure strong, effective programs is to promote accountability, competition, and performance, and these funds will allow States and tribes that can link their proposed activities to health and environmental outcomes to receive additional assistance. EPA will also continue its emphasis on working with Tribal governments to build the capacity of their environmental programs.

## REWARDING RESULTS AND INCREASING PRODUCTIVITY

The President's proposed EPA budget for fiscal year 2005 fully supports the Agency's work. The request demonstrates EPA's commitment to our principal objectives—safeguarding and restoring America's air, water, and land resources—by facilitating collaboration, harnessing leading-edge technology, creating market-based incentives, and ultimately finding a better way for environmental protection. As we look to the future, I am confident that this funding will ensure the Agency's fulfillment of our responsibilities to the American public.

With that, Mr. Chairman and members of the committee, my prepared statement is concluded. I would be pleased to answer any questions you may have.

## STATE REVOLVING LOAN FUNDS

Senator BOND. Thank you very much, Mr. Administrator, and let me begin with some questions. We have discussed water infrastructure funding. I think that funding our Nation's water infrastructure is one of the really pressing issues facing EPA. I have seen communities that don't have clean water. They aren't able to clean up their waste water, and I know what an impact that has on the health of their citizens, not just the environment.

I was very disappointed in the OMB recommendation on the EPW panel. I have heard people complain that this administration has cut the SRF's. I pointed out to them that OMB has done this traditionally.

We have people in OMB who apparently have never seen problems with waste water that is not cleaned up. I would be interested in any suggestions that the administration has on how States and localities can find resources to meet this country's water infrastructure needs. Are there other things that are in addition to SRF's?

How are these SRF's being used? How can we deal with the arsenic problem that Senator Craig has raised?

Administrator LEAVITT. Senator, I feel some confidence that your sensitivity on this matter most likely has its root when you were governor. It is certainly when I learned the value of the State Revolving Loan funds to small communities like those that have been mentioned already today.

In our States, most States, small communities, and even moderate to large size communities, have depended on State Revolving Funds. Now that I've become Administrator of the Environmental Protection Agency, and see the demand, particularly in some of our large cities for the retooling of their entire systems, the need has become quite evident to me.

It is also clear that there is a gap in our approach thus far as a Nation in dealing with this. I've had a chance to study the history of this problem going back to the passage of the major underpinning legislation when the country at the Federal level made huge investments, in the neighborhood of \$65, \$70 billion to create the systems, and they've had a good impact. But we're now at the point where just like our highways, many of them are beginning to need repair.

The question that is raised by this discussion, is what is the partnership? It will clearly be a partnership between the Federal Government, the State governments and local governments, and the rate payers and we are anxious to have that conversation. It will be a function of Federal funding. It will be a function of local funding and State funding, but there are other things we can do.

I think the point you make about using the funds differently, I am very anxious to have a conversation about using greater leverage in the funds that we've put forward.

How can we stretch the availability of Federal funds? How can we work with local water districts to employ rate systems that provide incentives for conservation?

Those are all part of this bigger conversation. We do think that it is an important area, and look forward to having a discussion with you and the committee.

#### MERCURY RULE

Senator BOND. Governor, I may have another several questions pertaining to SRF's that I'll ask on the second round, but I thought it is important to ask this question. I want to hear your responses, because I know this is going to be a controversial area.

This administration is the first administration to propose to control mercury from power plants; and that seems to be ignored by the critics, but there are lots of questions raised about the way that the regulation was adopted. I would welcome your comments on the Agency's commitment to reduce mercury exposure.

Administrator LEAVITT. Senator, I am anxious to reply, and am looking forward to the conversation further as we proceed. It is important to look at the history of this. The requirement for the Environmental Protection Agency to look at mercury came as a part of the Clean Air Amendments passed in the early 1990's. The Agency was to study mercury from power plants and decide whether it was a toxin that needed to be regulated in the early—in the mid-1990's,

I think 1994 was the deadline. The Agency did not meet that deadline. They were sued by an environmental organization.

A consent decree was entered into in I believe, in 1996 or 1997. That deadline was missed, and they extended it. The next deadline was missed, and they extended it, and then 10 days prior to the time this administration took office a declaration was made that mercury from power plants needed to be regulated. It was left to this administration, whoever it was that would be in my chair, to set the standard.

That standard was to be proposed on December 15, 2003. That is an obligation that I took very seriously. Among the first decisions that I made as Administrator was that we would meet that deadline, we would establish the standard. On December 15, we filed a proposed rule that would outline that standard. That was the beginning of a conversation.

We are in the midst now of a national comment period to hear from tens of thousands of people on their feelings regarding mercury.

I would point out that recently, the Agency did join with the Food and Drug Administration to highlight the relationship of mercury in fish. Basically, the message was fish is good, mercury is bad, and we've got to do all we can to reduce it.

The process we are in right now is to set that standard. We intend to set the standard as prescribed in the law, using the best available technology. We intend to do it in a way that is most efficient. We intend to do it to the furthest degree that we can. I feel some optimism that for the first time in this Nation's history, we will regulate mercury from power plants, and it will occur this year.

Senator BOND. Thank you very much, Governor. We have been joined by my Ranking Member, Senator Mikulski. Are you ready to offer us your comments and first round of questions?

#### STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Thank you very much, Mr. Chairman. And I apologize both to you and to Administrator Leavitt. I was testifying at a flood insurance hearing discussing the need to both reauthorize and reform it. My State suffered terrible damage during Hurricane Isabel. We were doubly hit, one by the hurricane, and again by some of the flawed practices of flood insurance.

#### PREPARED STATEMENT

Mr. Chairman, in the interest of time, I am going to ask for unanimous consent that my full statement go into the record.

Senator BOND. Without objection, we would love to hear it, but we will accept it for the record.

[The statement follows:]

#### PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

I would like to welcome Administrator Mike Leavitt to his first hearing before the subcommittee. The EPA serves the very important mission of protecting human health and the environment. So I am troubled that the 2005 budget request for the EPA is just \$7.76 billion—a \$610 million cut from the 2004 level. This is a cut of 7 percent.



A robust EPA budget is an opportunity to make America safer, stronger and smarter. It makes America safer by cleaning up our air, water and land. It makes us stronger by creating jobs and economic development. And it makes us smarter by helping to develop new environmental technologies.

A strong EPA budget gives us triple value for the taxpayer dollar. I'm concerned that this EPA budget doesn't get us there.

#### BROWNFIELDS

I'm pleased that Brownfields is one area in which the budget is strong. The budget request is \$210 million—a \$40 million increase over last year. Brownfields make our communities safer by cleaning up contaminated properties, stronger by creating jobs and economic development and smarter by using newer, better, and faster technologies for cleanup.

I am pleased that the budget makes a solid downpayment toward the fully authorized level of \$250 million for Brownfields. But I am also puzzled about many areas of this budget proposal.

#### WATER INFRASTRUCTURE

I know that EPA didn't get everything it wanted from OMB, but I really question some of the priorities. The most glaring example is water infrastructure. The budget request cuts over \$800 million in water and sewer project funding. The budget cuts \$500 million from the Clean Water State Revolving Loan Fund and \$327 million for targeted water projects.

The administration says it cut earmarks. But Congress funds these projects because the needs are so great. There is no national framework that even comes close to addressing the national needs.

Water and sewer funding makes our communities safer by cleaning up the environment, fixing sewer overflows and leaks, preventing pollution from getting into lakes, streams, rivers, and bays and by making sure our communities have safe drinking water by removing arsenic, lead and other contaminants. Water and sewer funding makes our communities stronger by creating jobs, businesses and economic development. And water and sewer funding makes America smarter by developing new technologies to clean our water.

#### NATIONAL NEEDS

The administration's cut to water and sewer funding is puzzling.

Our communities have enormous needs. Over the next 20 years, there will be a funding "gap" for our communities of \$540 billion. These needs have been studied and restudied.

In April 2000, the Water Infrastructure Network reported that our Nation's water and wastewater systems will face a funding gap of \$23 billion a year over the next 20 years. In November 2001, the General Accounting Office (GAO) reported that costs could range from \$300 billion to \$1 trillion over the next 20 years. In September 2002, the Environmental Protection Agency (EPA) reported that over the next 20 years, demands for improved sewer and drinking water systems will outstrip current levels by \$535 billion.

And in November 2002, the Congressional Budget Office (CBO) reported that water and sewer costs could average as much as \$40 billion each year. The results are conclusive and the need is real and valid.

#### MARYLAND'S NEEDS

Our Nation's Governors are struggling with tight budgets. In Maryland, we have \$4 billion in immediate needs, but this budget would cut Maryland's share by over \$10 million.

Governor Ehrlich is putting a "flush tax" on residents to try to make up the gap. So when the EPA doesn't help our communities the entire burden falls on local rate payers. But in many urban and rural low-income areas, rate increases are just not affordable.

#### JOBS

The budget cuts to water infrastructure are also puzzling because water and sewer funding creates jobs. For every \$1 billion we spend on water infrastructure up to 40,000 jobs are created.

I thank Administrator Leavitt for responding to my request for an updated, comprehensive jobs study and I look forward to working with him on it. But I am really puzzled why the budget skimps on this priority.

I know this was probably a funding decision by the OMB, but this cut really signals a failure in that we don't have a comprehensive national policy to address our communities' needs. We need new thinking on a new national policy to help communities pay for water and sewer.

Last year, the EPA convened a conference on how to "close the gap," including State and local officials, business and other experts to exchange ideas about how to meet water and sewer challenges. I would like to hear about how the EPA followed up and what the next steps will be. I want to know what the EPA is doing to develop new ideas to help communities meet these challenges. I am deeply concerned that this budget does not adequately address these challenges.

What is EPA, as an advocate for the environment, doing to make this a national priority and develop solutions to make America's communities safer, stronger and smarter?

#### CHESAPEAKE BAY

The Chesapeake Bay is a national treasure. Each year, the VA-HUD Subcommittee provides \$20 million for the EPA's Chesapeake Bay Program. The EPA is the lead among 23 Federal agencies working together with State and local governments to restore the Bay.

The subcommittee also provides funding for small watershed grants: \$2 million last year for grassroots projects to clean up the Bay. But the budget zeroes out these grants. The subcommittee also funds projects for nutrient removal from sewage treatment plants along the Bay. But the budget zeroes out funding for these projects. Instead, the EPA's budget includes \$10 million for a new "Targeted Watershed Initiative for the Chesapeake Bay."

#### BAY NEEDS

The Chesapeake Bay Commission, made up of representatives from Bay States, tells us that we will need \$18.7 billion by the year 2010 to clean up the Bay. So while we appreciate that this budget includes new funding, the Bay needs a more robust commitment.

I want to hear from Administrator Leavitt today on how the EPA plans to make highest and best use of funding for the Bay.

#### RESEARCH

Another area of the EPA's budget that makes America safer, stronger and smarter, is research and development. For example, the EPA's Science to Achieve Results (STAR) program develops partnerships between the EPA and scientists to come up with new ideas and technology to prevent pollution, protect public health, reduce environmental risks, and get new technologies to market.

Robust research funding makes our environment safer, helps fight threats against natural and man-made environmental disasters and it makes our communities stronger by developing new technologies for our communities to use. All of this makes us smarter in the way that we protect public health and the environment. But STAR research is cut by \$34 million in this budget.

Overall, the EPA science and technology budget is cut by \$93 million. Our country faces many environmental challenges and we need robust support for research to develop new technologies that will help our communities meet these challenges and protect public health. The budget also cuts \$8 million for building decontamination research.

The EPA has been a leader in building cleanup of anthrax and ricin—in our Senate buildings. The EPA's work is a model for private buildings. So I am troubled that this research is cut.

#### ENFORCEMENT OF ENVIRONMENTAL LAWS

I also want to follow up on the EPA's budget to enforce environmental laws. Over the past few years, the subcommittee has rejected the EPA's proposals to reduce Federal enforcement staff. The subcommittee had serious concerns that reductions in Federal enforcers would result in more polluters ignoring the law.

We need both a strong Federal and strong State enforcement to achieve compliance with our environmental laws. I would like to hear from Administrator Leavitt about how priorities are being set for enforcement.

The VA-HUD Subcommittee will continue to stand sentry against cuts to Federal enforcement.

## COMMUNITY ENVIRONMENTAL STEWARDSHIP

I also am concerned about cuts in this budget to programs that don't cost much but that are very important to communities. For example, this budget cuts environmental justice and zeroes out environmental education. The subcommittee provided \$10 million last year for these programs. These are small investments that make a big difference, so I am puzzled why they are cut.

## CONCLUSION

Finally, I hope that we can have a VA-HUD bill this year that is not a vehicle for environmental riders.

I thank Administrator Leavitt for his testimony today and I look forward to hearing from him about how the EPA's budget will make America safer, stronger and smarter.

## CLEAN WATER STATE REVOLVING LOAN FUND—REDUCTION

Senator MIKULSKI. Because I know that we are under a tight time schedule.

Mr. Leavitt, I know that you've just answered the questions on mercury, which were of very keen interest to me, but I want to go to another topic—water quality. The fact is that communities are facing very serious challenges in water, sewer, and treatment plants.

Here is my question: I understand that the budget proposes to cut \$500 million from the Clean Water State Revolving Loan Fund. Could you tell me what would be the consequences of this cut, how many projects won't be funded, and how this will impact public health and the environment?

Administrator LEAVITT. Senator Mikulski, we at EPA have done a study to determine what the gap in water infrastructure is now, and what we are investing as a country. The Federal Government clearly has a role in this partnership. It is a Federal, State, and local role. It is a ratepayer role. It is one that we all have to deal with, and we are anxious to not just look at what our role should be as a Federal Government, we are also looking to be able to add additional benefit. For example, to help in promotion of being able to——

Senator MIKULSKI. What will be the consequences of the cut? How many projects won't be funded, and how it is going to impact the environment?

Administrator LEAVITT. Senator, I'll need to submit that information to the record. I don't know precisely how many won't be——

Senator MIKULSKI. Can you tell me, though, what you estimate are the consequences of the cut?

Administrator LEAVITT. Well, the consequences that we find ourselves as a country, with far greater demands, not just for Federal money, but for local money, for State money, our Revolving Loan Funds, are not going to be sufficient to meet that entire need.

Senator MIKULSKI. That is exactly right, what is the backlog of requests on the claim for a Clean Water State Revolving Loan Fund?

Administrator LEAVITT. I'll have to give you the specifics.  
[The information follows:]

## CLEAN WATER SRF: REDUCTION

EPA believes that few if any projects will be impacted in fiscal year 2005. Federal capitalization grants are a smaller percentage of available Clean Water State Re-

volving Fund (CWSRF) as more funds are being derived from loan repayments, interest earnings, and issuance of bonds. As of June 30, 2003, the States had about \$3.5 billion of CWSRF funds available that had not yet been committed to loans. In addition, annual inflows to the CWSRF from new loan repayments, bond proceeds, and interest earnings continue to increase.

In 1997, the Federal Government promised to help States establish a \$2 billion projected long-term target annual revolving level for funding new wastewater treatment plants and other infrastructure to keep our waters clean. With the funding appropriated by Congress to date, the \$2 billion goal has been reached and, in fact, exceeded. A total funding level of \$4.4 billion is achieved by an appropriation of \$850 million a year from fiscal year 2004 through fiscal year 2011. Administration analyses using historical information indicate that, by extending Federal capitalization of the CWSRF program through 2011 at \$850 million per year, the President's proposal will significantly increase the CWSRF program's ability to fund projects in both the near term and in the long-run.

Senator MIKULSKI. Mr. Leavitt, I welcome you to your first VA-HUD hearing, but this is a pretty big deal question. If you can't tell me you've cut a half a billion dollars from the State Revolving Loan Fund, and you can't tell me what the backlog is, so how can we estimate what it is going to take to do this?

Administrator LEAVITT. Senator, I'm going to introduce you to Mr.——

Senator MIKULSKI. Can you do that?

Administrator LEAVITT. I'll introduce you to "Mr. Water" at the EPA, Ben Grumbles.

#### STATE REVOLVING LOAN FUND—REDUCTION

Senator MIKULSKI. Let me tell you, while he is getting himself together, and we look for the answers, the subcommittee feels that this is one of the most important areas that we can pursue. No. 1 it improves the environment, and it improves public health.

No. 2 it also creates jobs, and it creates jobs in the United States of America. So if you are building a water system here, or you are taking pollutants out of sewerage that goes into the Chesapeake Bay, you are creating jobs, from the civil engineers who design it, to the heavy equipment. It is a win/win thing, and I just cannot, for the life of me, see why we would cut clean water funding. You want to tell us?

#### BACKLOG OF WASTEWATER PROJECTS

Mr. GRUMBLES. Senator, I am Ben Grumbles, I am the Acting Assistant Administrator for the Office of Water. The backlog is a question. What you have to do is look at the backlog in each of the States.

Senator MIKULSKI. What does it add up to?

Mr. GRUMBLES. Well, what it adds up to is, is that each State has an intended use plan, and I can't say what project each and every State has. What I can tell you is that given our proposed requests for the SRF, we know that the gap will continue. But we also know——

Senator MIKULSKI. Can you tell me what the backlog is in American dollars? I can tell you what the backlog is in Maryland. We have got a \$4 billion backlog. We are under a \$900 million consent decree in Baltimore City because our water system was built over a hundred years ago. Baltimore City doesn't have \$900 million, neither do the ratepayers.

Let's start there. So you have got a backlog of \$4 billion in one State and you've got 50 States. I am very frustrated by the inability to tell me what is the dollar backlog. Your predecessor could do that.

Mr. GRUMBLES. We could tell you from a national perspective.

Senator MIKULSKI. What is it?

Mr. GRUMBLES. There is a \$21 billion gap in the amount of funding that is needed over the next 20 years, and that States and localities, if they relied on their current revenue sources, will have. We factored into this debate the reality that the way to close that gap is to have a long-term funding plan. And the 850—

Senator MIKULSKI. What is it? You are starting with a \$500 million cut.

Mr. GRUMBLES. Right. The problem is the \$850 million a year from Federal funding through 2011 adds essentially \$4.4 billion in moneys at the Federal level. But the most important aspect is to focus not just on the supply side, but the demand side. So what we are doing is accelerating the whole emphasis on sustainable infrastructure through different mechanisms, pricing mechanisms, asset management.

There is also targeted funding, targeted watershed grants for the Chesapeake Bay for a new initiative to provide \$10 million to help advance innovative trading between water point source—

Senator MIKULSKI. That is a trading thing like a commodity. What we need in Maryland is actual dollars to do water and sewer, and waste water treatment programs.

We don't need cuts in these areas. And we could go over the estimates, you estimated \$21 billion gap, others have different estimates. Well, we know we have very serious shortfalls. So do you think that a \$500 million cut is a wise and prudent thing to be doing here?

Mr. GRUMBLES. I can respond that the \$850 million in funding, needs to be viewed in the context of, "What are the various programs under the Clean Water Act?" We are actually increasing the funding to the States, Maryland, and other States, for management of the Clean Water Act in general through the Section 106 program. We are also emphasizing additional funding through the Targeted Watershed Grants Program, and through a new \$23 million results-oriented performance grants program.

The point is, is that while we recognize there is a tremendous gap, that we can't just focus on one program, and one agency at the Federal level. We need to look at the other programs, the innovations, the grants to the State in exploring non-point source, as well as—

Senator MIKULSKI. Weren't they cut as well? Aren't they cut as well?

Mr. GRUMBLES. We are proud of the increases in funding for some of those programs, but there is—

Senator MIKULSKI. I think we've covered the ground, and I appreciate your comments.

But, Mr. Chairman, you and I have discussed this. I think this is an area of bipartisan agreement where we need more water and sewer dollars.

I can't see the clock. Is my time up?

Senator BOND. Well, Senator, you have had time as the ranking member, and we have a couple other members here, but if you want to follow up on that, I have no problem. I have made my views clear, and I spoke on this issue, and I thought I spoke for you, apparently I did, when I said that the cuts in the Clean Water SRF was not acceptable.

Senator MIKULSKI. Well, I'll yield my time to other members, and then I'll come for a second round.

Senator BOND. Thank you very much, Senator Mikulski. We have been joined by Senator Domenici. I'll give him an opportunity to make comments and questions for his time slot, and turn it back to Senator Leahy.

Senator DOMENICI. Are we—excuse me, Mr. Chairman. Are we at questions? Have they spoken already?

Senator BOND. Yes, we are well into it, so we'll give you 5 minutes for comments and questions.

Senator DOMENICI. I'm very sorry that I'm late.

Senator BOND. We all have too much to be doing.

Senator DOMENICI. To tell you the truth, I wasn't doing anything.

Senator LEAHY. You may not want that in the record.

Senator DOMENICI. It could be on the record. I'm trying to get my health back, so there is no rush. Got to take it easy, you know.

I thought I had some questions here, that were more specific, but I'm going to give this back to him and see if he can find them.

#### STATEMENT OF SENATOR PETE V. DOMENICI

I first want to congratulate you and hope you like your job—  
Administrator LEAVITT. Yes, I do.

Senator DOMENICI. And compliment you on your science advisor, Dr. Paul Gilman. I hope he doesn't leave you, because he is a very good man. Lots of people want him.

#### ARSENIC STANDARDS

Senator DOMENICI. One of the things we have out in our part of the country, and it might flow over into some other parts that are not just in the West, is the issue of the arsenic standards.

Mr. Leavitt, I don't know if you remember when you were out in your State that a situation has arisen regarding arsenic. Do you remember?

Administrator LEAVITT. Very clearly, Senator.

Senator DOMENICI. Well, we are in a jam, because we got a standard for arsenic that is crazy, and you have to implement it, I guess, in due course. But somebody got themselves in a position where they couldn't get out of it with further administrative activity on the part of your department, and we're stuck with a standard that is going to cost an enormous amount of money to small communities, and they don't have it.

For some of us, for some of our communities, it is an enormous amount of money. The thing that is so peculiar is that in States like mine, we have lived with arsenic in the groundwater, and flowing in our dry rivers, which we call arroyos for a long, long time. We have traced back the history of the Spanish conquistadores who lived in this area, and the Indians who preceded them, and we

don't have any evidence at all that the arsenic that was there harmed them.

So I want to know if you are looking at some way to help us. There is a bill with many of us cosponsoring it, and we are going to pursue it, but it doesn't do any good unless we have you on our side.

I know you are stuck with a budget this year. That isn't going to last forever. We have to have a way to either defer this, or find you recommending that we have to take care of some communities that don't have sufficient money.

Now, there are some that have sufficient money, but it is just too much. Albuquerque has money. They could go out and do something. But it is in the few hundreds—hundreds of millions of dollars, which is just too much if it is not necessary.

Would you first address it?—and then I have another question.

#### TECHNOLOGIES TO REDUCE ARSENIC

Administrator LEAVITT. I will invite Paul Gilman to come to the table and tell you specifically about some of the things we're doing in the technology area. While he is coming, may I just address this whole area generally? You've raised it, others have as well.

We established a series of high standards in this country on water, and they are serving us in the context of clean air and water, and improving our public health. We do face at each end of the spectrum on our large systems and our small systems dramatic problems, systems that will require billions of dollars of improvement.

We, as a Nation, have not fully wrestled with how we are going to pay for those. The Federal Government's role is only one portion of it.

On the other end of the spectrum, we are dealing with small systems, like the ones that you've referred to, and that were referred to earlier. We are working to help communities not just finance those changes, but also to find technologies that can make it affordable, and I'd like to ask Paul Gilman to detail a couple of those.

Dr. GILMAN. Thank you, Senator. We have a demonstration program that we are actually implementing as we speak. In fact, one of the sites in New Mexico opened just a few weeks ago. That program is aimed at marrying up different technology companies who have technologies that they believe can be more cost-effectively implemented for small communities, with small communities who have arsenic issues with their water systems.

Our initial phase of that is to have 12 sites up and running. With the funding this committee has provided, we think we can provide an additional 18 to 22 sites that would be doing it in phase two. There we've identified 148 technology vendor proposals, and 32 different sites. Our effort is to try and go to all of the different types of geological media with the appropriate kinds of technology so we can in fact look to the range of issues that different States find, so there are several sites in your State, there are sites in Maryland, Vermont, and Idaho.

So we are trying to hit all the different geologic media, as well as the different community situations, and marry up technology to bring those costs down.

Senator DOMENICI. Thank you very much.

Administrator LEAVITT. Senator, I'll also mention the fact that the Agency is also phasing the arsenic rule over a longer period of time, encouraging the States to use the exemption authority that has been provided them by the Safe Drinking Water Act. The exemption authority will allow States sufficient time to allot portions of their drinking water revolving funds obviously, which we need to build larger, to handle problems like this.

Senator DOMENICI. Thank you very much. Thank you, Mr. Chairman.

Senator BOND. Thank you, Senator Domenici. I passed over Senator Leahy for the first round of questions. If you want, I will be happy to defer from my end the second round of questions to you after Senator Leahy. I want to give Senator Leahy time. He has been here for awhile. I apologize.

#### MERCURY RULE

Senator LEAHY. That is all right, Mr. Chairman. I appreciate that, and I don't have to leave. I know after some of the comments I made at the beginning, it is only fair that Governor Leavitt be given a chance to respond.

I would point out that I keep hearing the statement the Bush Administration was the first ever to propose a mercury regulation. First, they had to under a settlement agreement. They had to do it by December 15 of last year. To say you've done something you were required to do is commendable, but you were required to do it.

And of course the proposal is a 70 percent cut, not a 90 percent cut, as the previous administration was working toward.

This chart shows just a few examples of where you have language taken from industry memos. It is almost a case of you don't really need all the people to write things. Just take what you get from the industry, take the letterhead off, put yours on.

In some places it is verbatim. In some cases, it has a word or two changed. In fact, you go down through the EPA proposal language and I could find about 20 places where this occurs.

I know that Senator Jeffords called on you to seek an inspection by the Inspector General, and have her find out why it is that an independent agency like yours is having their regulatory work being done by the same people that are supposed to be regulated by it. I understand you have not made that request.

Doesn't this industry influence raise some questions about your agency's independence, if the same people you are regulating are writing your independent regulations? Is this the fox guarding the chicken house?

#### PROPOSED MERCURY RULE

Administrator LEAVITT. Senator, let me make clear that we brought that allegation to the attention of the Inspector General. I took the mercury MACT rule home over the Thanksgiving holiday and spent a good chunk of that weekend reading about 275 pages of a regulation.

Senator LEAHY. And you stayed awake?



Administrator LEAVITT. Well, I must say they are mind-numbing. But what I was evaluating was a series of ideas. The source of the language wasn't clear to me, and as a matter of course, I would say I would like to know where it came from, but this is a proposed rule. Ideas came from lots of different places.

As a matter of general course and practice, we need to know that, and I am not here to explain it. There is an explanation. That is not productive. The important thing for me is to make certain that—that I tell you directly that we intend to regulate mercury from power plants, and for the first time.

We intend to do it as aggressively as we can to optimize it, given the nature of the available technology. I spent a lot of time in the last 3 months learning the science of mercury and learning the technologies that are available. There is a new technology called activated carbon injection that we have lots of optimism for. The actual amount that we can reduce mercury revolves in large measure around when that technology can be deployable. We think it is deployable.

We think that in fact it is the way in which we'll get to a 70 percent reduction. I can find no evidence anywhere in the EPA where we have proposed a 90 percent reduction. I know that people have talked about it, but I can find no evidence where the EPA has ever proposed that formally until December the 15th, when we suggested that the proposed rule, that is now part of—

#### MERCURY REDUCTION—COAL-FIRED POWER PLANTS

Senator LEAHY. The technology says we could do 90 percent, doesn't it? I'm looking at a report from the "American Coal Council" magazine, where they talk about these things. Tests have shown you can go down 90 percent.

In the industry-wide application, these technologies within 5 years, couldn't we go 90 percent?

Administrator LEAVITT. It is our opinion that the ACI technology is not yet deployable to scale. Let me tell you a little bit of background that I have, what I learned. There are two ways to reduce mercury at coal-fired power plants. The first is by reducing NO<sub>x</sub> and SO<sub>x</sub>. That is what is known at that point as co-benefit, by reducing NO<sub>x</sub> and SO<sub>x</sub>, we get benefit of mercury being reduced as well.

The second means is by controls designed to include mercury. This includes an activated carbon injection system. This essentially is to put a large charcoal filter, if you will, at the top of a smoke stack. The carbon molecules catch the mercury as it goes, and they are able to be essentially harvested, and cleaned, and disposed of in a different way. It is a technology that has been used successfully. They are using it to reduce mercury emissions from municipal wastes, and achieves over 90 percent.

We have also begun to deploy on an experimental basis, on a limited number of power plants, the ACI technology, but it has never been put on a full scale power plant anywhere in the country, and run full-time for any considerable period of time. I have had a chance to speak with the owners of the power plants, and the engineers and the environmental specialists who are testing it.

They have tested it, and in certain conditions, but not in others. This is a big investment, and one that I believe will be made, and that it will ultimately result in a substantial reduction in mercury emissions from coal-fired power plants. The technology needs to be deployed. It needs to be deployed as soon as it is reasonably possible, and we'll do it aggressively, and that is what ultimately will be in the final rule.

Senator LEAHY. Governor, I hope so, because I don't know what you tell mothers, fathers, and grandparents. If you have young children, what do you do? I'm not sure what to tell my pregnant daughter on these things. I look at my grandchildren, and I worry about them.

I do commend you for speaking out and expressing concern when this came to light. But you can understand these kind of things taint just about any statement that comes out, because the people feel that the same polluting industries that are supposed to be regulated by this, are writing the regulations.

The EPA's credibility is gone. Ultimately, in many ways, your credibility is the most important thing you have here. People will cooperate and work with you to clean up these plants, if the credibility is there.

The credibility gets lost, even if you came out with a proposal that you and I would agree on. You are going to have a problem then getting everybody to get onto the bandwagon, spend the money necessary to do it, if the credibility is not there.

I will submit other questions for the record. Maybe you and I will have a chance to talk more about this.

#### MERCURY RULE

Administrator LEAVITT. Senator, I would be delighted to do that, as we do today on the public record. I want you to know, and other Members of this committee, that we intend to finalize the first ever rule regulating mercury from power plants this year, and we will do so in a way that will reduce to the maximum level possible under available technology. And that we'll be deploying technology in the future to reduce it.

We believe it can be reduced by 70 percent. We believe that there are alternative ways to do it. The final rule, which will be final this year, will be the best of the ideas that we can receive from literally tens of thousands of people in written comments from public hearings across the country, because we acknowledge and recognize that this is a toxin, that it puts pregnant women and fetuses potentially at risk.

We are anxious to cooperate with other governmental agencies, and have as recently as this week with the FDA to make clear to people what guidelines of their own behavior should be that would protect them. I look forward to more conversations on this matter.

Senator LEAHY. Well, as you know, that when your confirmation came up, there was some, some controversy, I voted to confirm you.

Administrator LEAVITT. Thank you.

Senator LEAHY. Many in my State were unhappy with that vote. I hope that you will do this the right way, and let us work together.

Mr. Chairman, thank you very much.

## MERCURY—WESTERN COAL VS. EASTERN COAL

Senator BOND. Thank you very much, Senator Leahy. We appreciate it. There will be questions submitted for the record. Senator Domenici has questions, Senator Craig, and of course Senator Leahy's questions. I would just say that the coal that we burn in Missouri is Western coal, and there are real questions whether the ACI works on Western coal.

We understand it may be more effective on Eastern coal, but, as I said earlier, we have got to explore the technologies aggressively to get these pollutants out, because you know, we are trapped. If we can't get the technology that allows us to burn the source of fuel that is abundant, that is coal, we are going to impact families heavily. It's not family values when an elderly couple can't afford to pay their heating bill and buy the food they need, when a young couple can't keep the house warm enough for their children, and still get them the care they need. This directly impacts us in several ways, so this is all connected together.

Let me ask you a difficult question. On April 15, EPA will be designating additional areas as nonattainment for the ozone standard. How will the agency's designation protect public health, as well as ensuring and protecting a healthy economy?

## INTERSTATE AIR QUALITY RULE

Administrator LEAVITT. Senator, the Agency does have an obligation to designate those areas in this country that are in attainment with our new 8-hour standard on ozone. We'll meet that requirement, and we'll do so in a way that will be both consistent and defensible, and in a way that will allow us to work then with communities over the course of the next several years to bring them into attainment.

The most important thing we are doing to bring them into attainment is the Interstate Air Quality Rule, which will bring nearly all of the roughly 500 counties that will not be in attainment into attainment. The Interstate Air Quality Rule itself will reduce  $\text{NO}_x$  and  $\text{SO}_x$  by 70 percent and will bring nearly—will bring all but 17 of those counties—17 to 20 of those counties into compliance.

So we are not only putting designations on the table, but we are also providing a means by which they will be able to reach attainment within a relatively short period.

## OZONE NON-ATTAINMENT AREAS

Senator BOND. This might be a good opportunity to explain how you envision a partnership between the EPA and the States to assure compliance with the environmental laws.

Administrator LEAVITT. We are actually working in direct partnership with the States to determine the areas of attainment and nonattainment. The States made recommendations to the EPA on which areas they believed should be found in nonattainment. The EPA has been working to express our opinion, and to find ways in which to work with the States to reach agreement on which areas would be in nonattainment.

Once an area has been designated nonattainment, we will then work with them to develop a plan. They'll have a 3-year period to

develop a plan, and we will have 1 year in which to comment and accept it, and then we'll move forward to what would be new standards, cleaning up what is essentially smoot, or soot and smog, and has a substantial impact on the health of people in this country.

This is a good thing, and we can do it in a way that will keep us competitive as a nation.

#### EN LIBRA PRINCIPLES

Senator BOND. As governor of the State of Utah, you promoted the principles of en libra. What is it and does it apply to your work in EPA?

Administrator LEAVITT. En libra is a Latin word that means to move towards balance. Today we've dealt with a number of problems that have thorny edges. We are dealing with the need for cleaner power plants, and the need to keep us economically competitive, and en libra recognizes if we utilize markets, people will do things faster, and do more of it than if we simply use command and control.

It acknowledges that we need strong national standards, that there are neighborhood solutions that we can find to solve those problems. It acknowledges that collaboration is always a better way than polarizing and litigating.

It acknowledges that as we focus on results, we will have more success than if we simply focus on programs. It is finding the productive center. Today we talked about many problems where it can well be applied.

#### SUPERFUND—CLEANUPS

Senator BOND. Final question for this round. Superfund. I mentioned some of the concerns I have about Superfund, and the small amount going to actual clean-ups. You've asked for a \$124 million increase. Right now it is very difficult to find that. How are you going to allocate the resources within the program? How is your internal review coming on the allocation of resources within Superfund to assure the maximum utility for what we appropriate for Superfund.

Administrator LEAVITT. Your request has been taken seriously, Senator. I'm going to ask Marianne Horinko to come forward to comment. While she comes forward, I would say that we have made requests for additional Superfund dollars, and we are committed to see they are used effectively, and are making progress on many of the sites, and want to make more. Marianne.

Ms. HORINKO. Senator, thank you. I would like to thank the staff for support. As we are winding up the 120-day study, we feel it is incumbent upon us as we ask you for the kindness of more funding to make sure we have taken the existing funding you've given and maximize the dollars towards cleanup, so we are about near completing that funding.

As you can imagine, there aren't huge pockets of cash we discovered out there. But there are program efficiencies that we can undertake, and we will look forward to coming up with a review with your staff on some of those proposed measures to maximize dollars towards cleanup over the next several weeks.

Senator BOND. Thank you very much. Senator Mikulski.

## WATER INFRASTRUCTURE—JOBS STUDY

Senator MIKULSKI. Thank you, Mr. Chairman. Let me go to one other question to follow up on the water issue.

I contacted you, Mr. Administrator, about the need to have an updated study about what is the job impact on water infrastructure, which you responded to, and I appreciate that. In a letter to me I think just a few days ago, you said that you've set aside the money. It is a more complicated project than just giving you a 60-day report. You were now going out to get the right people to give us that assessment.

I appreciate that this is complicated, but I think it would give us a good benchmark about where a public investment improves the environment, public health, and creates jobs, which I know would be hopefully a bipartisan agenda.

First of all, thank you for your response. When do you think we could get an estimate of that, as we work for, in your own words, that productive center?

Administrator LEAVITT. I'll give you a direct report.

Mr. GRUMBLES. Ben Grumbles again, Senator.

Senator MIKULSKI. Yes.

Mr. GRUMBLES. I wanted to tell you that we very much welcome this directive to do the study. We are in the process of making sure that we've got the right people to do it, to ensure the independence and integrity of it.

I am not sure if it is a matter of weeks or months, but we are working very much to try to get this put together and recognize the importance of the ability to update the number of jobs estimated that are created by investment in infrastructure.

Senator MIKULSKI. Do you have any idea if we'll have this before we conclude our appropriations process?

Mr. GRUMBLES. I'm not sure when the conclusion of the process is, but we could some time towards the end of this month, or I would say into the next month is when we could—

Senator MIKULSKI. When could you initiate the study? Could you then stay in touch with our staffs about when you think the study is done, I, of course want a quick case study, Mr. Administrator. I don't want to study it to death, but we do want exactly what you called for, accuracy and independence, so we want to press on, but also press for accuracy and independence. So could you let us know when you are going to get that?

Mr. GRUMBLES. Most certainly.

## CHESAPEAKE BAY WATERSHED INITIATIVE

Senator MIKULSKI. While we're here, we talked about the watershed issue, the \$10 million in terms of the targeted watershed initiative for the Chesapeake Bay, again we appreciate it being targeted. The Executive Director of the Chesapeake Bay Commission raises some flashing yellow lights about the language.

She is concerned, as are the members of the Commission, that the current language proposed by the administration would tie non-point source programs to limiting the grantees to nutrient trading activities, yet still involving a huge and costly reduction in nutrients that must take place before any trades take place. So we

still have to spend these great buckets of bucks on the nutrient removal before we get to the trade.

We are concerned that this is a good intention that might not have the result. I would like to share with you Miss Swanson's recommendations, and to see if we could work with you so that we really do get the bang for the buck, and have not just limited it to trading activities. She has some constructive recommendations that we'd like to share with you, and see if again we can't then make maximum use of taxpayers' dollars, in terms of the protection of the Bay, which has been a longstanding bipartisan initiative supported by every President, and was initiated by Senator Mathias, my Republican predecessor. We want to stay in touch with you on that.

I'd like to go then to enforcement. We have been concerned on the committee for some time about vigorous enforcement—not concerned about the enforcement, but is it really happening?

Could you share with us where you are on the aspects of criminal enforcement? Do you have enough resources? What is the backlog that there might be now on criminal cases, and so on? Could you give us your views on that?

Administrator LEAVITT. Yes. Our Office of Enforcement is implementing currently recommendations of a management review that was issued in December of 2003. Key steps that were recommended included refocusing EPA's criminal investigations on environmental crimes, and in fact evaluating organizational structure, including field operations to ensure that optimal deployment of investigative resources were used.

And that we were securing a separate source of funding for the various aspects of that, that needed to be. Despite that, the fact that we have limited enforcement, we have been able to, I think, move forward. Clearly enforcement, criminal enforcement and civil enforcement are clearly a very important part of an environmental regulatory agency.

Our first obligation, our first desire, is to help people comply. But if people evade, or if they avoid, they'll feel the full weight of the Federal Government until they do.

#### CRIMINAL ENVIRONMENTAL ENFORCEMENT—BACKLOG

Senator MIKULSKI. Well, I appreciate you drawing the distinction. I want to draw the distinction between civil and criminal activity. Civil often is not clear for a variety of reasons that you've just hinted at. But criminal is. When I talk about criminal, I'm talking about premeditated, deliberate desire to usurp, evade the environmental laws.

Do you know what your backlog is on the prosecution of criminal cases?

Administrator LEAVITT. I'll ask the Office of Enforcement to give you those.

#### CRIMINAL ENFORCEMENT

Senator MIKULSKI. Because one is really, as you know from your own background, that is different than just not knowing the regs, or getting bad legal advice.

Administrator LEAVITT. Indeed I do.

Ms. HARRIS. Good morning. My name is Phyllis Harris, I'm the Acting Assistant Administrator for the Office of Enforcement and Compliance Assurance. I can assure you that we are taking very aggressive steps to deal with the entire case log of the criminal enforcement program, and indeed as Administrator Leavitt mentioned, we just undertook a study of the overall resource allocation of the program. Right now we are in the process of making adjustments to assure that we have adequate resources in terms of where the cases are.

As a natural progression, I would say in the criminal program, we have cases in various stages of investigations, and we believe we are aggressively pursuing those through the actual partnerships that we have with our State agencies, as well as the U.S. Attorney's Offices. And through that progression, we are making very good steps, ensuring that we are effectively prosecuting—

Senator MIKULSKI. Can you tell me what the backlogs are, though, and are there patterns within States or regions?

Ms. HARRIS. I can follow up with you specifically on the backlog as to whether or not there are patterns in regions and States.

Senator MIKULSKI. I would encourage you to look at—in other words, this also goes to the deployment of your resources. If some have a greater level of criminal activity, you'll of course want to deploy. I know I share this concern with some of my colleagues, who are also very keen on, very strong on enforcement of the environmental laws.

We really do want this information from you, and we would like to know how many cases EPA has decided not to pursue because of either funding shortfalls or staff shortages, because you just don't have the people to do the cases.

Ms. HARRIS. We'd be happy to provide that you to.

[The information follows:]

#### CRIMINAL ENFORCEMENT BACKLOG

This table shows that a total of 1,067 criminal enforcement cases remain "open" dating from fiscal year 1991 through April 26, 2004, most of which have been opened since fiscal year 2001. Eight hundred and ninety two of these cases are at the "pre-indictment stage" (i.e., they are still within EPA's investigative control). The remainder are either at the Department of Justice or the Federal Courts (i.e., at various stages of review, litigation or appeal). These cases represent only traditional environmental crime cases and do not include homeland security cases or the Administrator's Protection Service Detail cases.

EPA has maintained a relatively stable number of open, active cases as an ongoing workload. These are cases that are receiving active attention by criminal investigators and/or Department of Justice staff. Normally, if a case remains open, exhibiting little activity, it usually is because of continuing legal proceedings (i.e., plea bargaining, litigation, appeals, etc.).

Fiscal Year	Number of Open Cases	Number of Open Cases Pre-Indictment	Number of Cases on Appeal
1991 .....	1	0	1
1992 .....	4	0	2
1993 .....	2	0	1
1994 .....	3	0	1
1995 .....	8	1	1
1996 .....	9	0	5
1997 .....	11	3	2
1998 .....	23	9	3
1999 .....	51	22	0

Fiscal Year	Number of Open Cases	Number of Open Cases Pre-Indictment	Number of Cases on Appeal
2000 .....	83	50	4
2001 .....	150	121	2
2002 .....	221	223	1
2003 .....	308	282	0
2004 .....	193	181	0
Total Cases .....	1,067	892	23

Administrator LEAVITT. Senator, I can shed this much light. We opened 470 traditional environmental crime enforcement cases in fiscal year 2003. That will give you a sense of the proportion. The recent study by the Inspector General reported that the environmental crime investigations during the last 6 years have been relatively stable, and that as of September of 2003 they concluded that the Criminal Investigation Division was carrying out its mission to investigate environmental violations in the environmental statutes.

I don't think that is a prescription for perfection, but I do think it is a demonstration that we are carrying that part of our mission out. And additional information, we will supply to you.

[The information follows:]

#### CRIMINAL CASES NOT PURSUED

The Criminal Investigation Division (CID) opens criminal cases based on criteria in a 1994 policy memorandum on investigative discretion. The criteria are significant environmental harm and culpable conduct. Some of the CID Special Agents in Charge of the Area offices will not open a new case if they believe they do not have adequate resources to handle it. Instead, they will refer the original investigative leads to EPA's civil enforcement program or to State authorities. The disposition of leads in fiscal 2002 is summarized in the table below. (To reemphasize, this table refers to leads, not formally opened criminal enforcement cases; formally opened cases are almost always pursued.). CID does not have an automated tracking system for leads; these figures are compiled manually, and the fiscal year 2003 figures have not yet been compiled.

#### DISPOSITION OF LEADS RECEIVED IN FISCAL 2002

	Leads	Percent
Under CID Review .....	270	14
Closed Prior to Referral .....	415	21
Referred to State/Local .....	702	35
Referred to EPA Civil Program .....	188	9
Referred to Other Federal .....	91	5
Opened as a Criminal Case .....	310	16

#### EPA'S ROLE IN HOMELAND SECURITY

Senator MIKULSKI. I'll go to one other criminal act, which is the ultimate, most despicable, and heinous, which is an act of terrorism. As the administrator of the EPA, could you share with us where you are in terms of your role in Homeland Security, and your role in making recommendations, and having adequate resources for the protection of America's infrastructure? Could you tell us what you are doing with the Department of Homeland Security, and what we need to do to help you carry out your responsibility in that? Because to me, that is the ultimate crime.



Administrator LEAVITT. Homeland Security is everyone's job. EPA does have some specific responsibilities particularly for—in the area of water. It has also been quite—you've seen us in a prominent role with respect to clean-ups, with respect to anthrax, also the World Trade Center, also regarding the Columbia Space Shuttle and others.

I'll ask Marianne Horinko to give you a direct report on many of the activities that we are undertaking on a going forward basis.

Ms. HORINKO. Senator, first of all, I'd like to thank you for your support to us over the years, and particularly in the anthrax and more recently the ricin. This is an unexpected role for all of us. We appreciate your support during these very challenging times. We also thank you for the resources you provided us in the past.

In my own program, we've hired additional on-scene coordinators, opened a new emergency response team in Las Vegas to complement our teams in Cincinnati and New Jersey, meaning increased capacity for West Coast responses.

We've worked closely with the Department of Homeland Security in the Biowatch Program to detect incidences of biological contamination, also working closely with them for developing protocols for responding to radiological responses, and have done a number of large-scale cross-agency exercises and training and deployments to test out how to respond to different types of attack.

As we move forward, we are looking at enhancing our ability to work with different parts of the infrastructure, such as the water safety issue in the chemical industry and others to ensure that we have appropriate threat protection that is a cooperative effort with Homeland Security relief. And we are also working on the issue of laboratory capacity nationwide, making sure we add laboratory capacity in the States and Federal installations, and private sector to respond to an incident of weapons of mass destruction on a large scale.

So as the Administrator indicated, it is an enormous job. Our job is a daunting task. We are working hard at it, and working collaboratively with the new department.

Senator MIKULSKI. Do you need more help?

Ms. HORINKO. We could always use more help. We would be happy to sit down with you and—

#### ANTHRAX IN THE SENATE

Senator MIKULSKI. Why don't we do that. Mr. Chairman, I know the clock is ticking. First of all, EPA did a really yeoman's job after we were hit by anthrax here, and also along with the post office at Brentwood, and some private sector facilities. Is your office in the Hart Building, Senator?

Senator BOND. No.

Senator MIKULSKI. I was one of the Daschle 13, meaning I was in the Daschle air vent system. We were out of our office for 6 months, but thanks to all of us working together, and I might say the leadership of Dr. Frist, we were able to keep the Senate going, but thanks to the Marine Corps Decon Unit from Indian Head, the very good work of your predecessor, and this incredible team that you've put together, we now not only could go back, but we could go back with confidence.

We have pregnant women who work here, people who served overseas, and in some ways have compromised immune systems, we have people who have asthma, we have a lot of issues of our own staff who work for us, so we want to thank you.

I am troubled, however, that there is a cut in building decontamination in the science and research account that I want to talk about, because I think you did a great job. I think you learned a lot, and I think this is another area to research. I am very concerned about laboratory capacity, the research buildings, because there might not be a big bomb, but it could be a bioattack within our building, it could be a dirty bomb, et cetera, for which we want you to have the right research.

Mr. Chairman, I'd also like to thank EPA for the way they responded to the very melancholy Columbia incident. It really was a multi-State, multi-agency effort, and EPA's role in this helped. The job that you all did helped weigh in the professionalism, helped give consolation to the families, but at the same time laid the groundwork so Admiral Gehman could do his work, and so we could come up with lessons learned that would never happen again.

So I would like to thank you, and all of the people who worked in very difficult circumstances.

Administrator LEAVITT. Senator, on behalf of the Agency, I accept your kindness. I also would reflect Marianne Horinko and her leadership, as she has demonstrated not just great leadership, but inspiring courage at some very difficult times.

Senator BOND. Thank you very much for your questions, Senator Mikulski. And I, too, share your great concern about Homeland Security. The Senator from Maryland and I serve on the Intel Committee, and we are most interested in dealing with many of these issues.

I think some of these discussions are probably better carried out not in the public eye, but do you have any ballpark figure of the needs you may have to do of the many tasks that you are assigned under Homeland Security? I have a feeling that we are looking at a tidal wave coming up of additional needs. Have you all done an assessment of those, of what you think the needs may be in the areas we've discussed?

Administrator LEAVITT. Senator, without giving you a specific number, may I reflect on my experience now as Administrator of the EPA and also in my previous responsibilities as governor.

Homeland Security is everyone's second job. It has to be inculcated into our fundamental missions. And we are approaching it in that way at the Environmental Protection Agency. We recognize there will be additional resources that will be necessary, and we will be forthcoming in providing you with the specifics in appropriate venues.

But I can also tell you that we view Homeland Security to be part of every office in this agency, and part of our mission is to contribute to the Homeland Security network of this country.

#### TOTAL MAXIMUM DAILY LOADS

Senator BOND. Thank you. Total maximum daily loads, that is the limited pollutants in waterways. If the State fails to meet the requirements, EPA has been charged with carrying out the respon-

sibility. Right now, despite some progress, some 39 percent of the river and stream miles assessed by the States and 45 percent of the lake acres, do not meet the water quality standards.

When you talk about TMDL, you strike fear in the hearts of agriculture, small communities. This is a huge issue, a huge concern. To what extent does non-point source pollution impact TMDL's? What steps are being taken by EPA with the States in things such as run-off from animal feeding operations, and are you looking at ways to keep the costs within reason?

Administrator LEAVITT. Again, Senator, something I have some direct personal experience with in my previous role.

The whole area of non-point source pollution is the next opportunity for substantial progress in this country, but it also is one that requires a new skill, with its collaboration on a watershed by watershed basis. There are numerous examples where local communities have come together to clean up their watersheds, and it begins to happen when the local government, the local water system, the local agriculture community work together to do it.

Our role at EPA is not just to create an atmosphere where that can happen well, but in many cases to provide best practices, to provide resources, provide a continued urgency for it to occur. We are providing all of those, but it falls back into the pattern I spoke of earlier, where we desire to have the improvement you spoke of, and to do it in a way that maintains our economic competitiveness as a Nation. We can have both. That is our objective, to clean up the streams and non-point sources. To do it in collaboration is the key.

#### BROWNFIELDS

Senator BOND. Speaking of collaboration, I would refer you to a bill I have been shopping around for a number of years, called The Fishable Waters Act, which involves collaboration on watershed bases, and brings together many of the cooperating parties. And I would tell you there is a great desire for cooperation, and I would say that EPA Region 7, working with the University of Missouri, and some work that we funded here, has, I think, has developed some very, very cost effective, desirable means of controlling non-point source pollution.

And I think that this could be both productive for the landowner in planting valuable crops and using those crops to curb TMDL's to bring down the total daily maximum load numbers.

Brownfields, we have a problem. One of the Cass/Bates Regional Planning Commission in West Central Missouri is really built around a very great fishable lake, great tourist site, but has some Brownfields in the seven-county region, and they haven't been successful in making it onto the EPA's scoring process.

I'm concerned that rural areas are disadvantaged, but is there anything that needs to be done? How can we deal with Brownfields if they happen not to be in a metropolitan area?

Administrator LEAVITT. I'm going to ask Marianne Horinko to give you comments on that point.

Ms. HORINKO. Senator, we share your concern. A number of other Senators and Representatives from primarily Midwestern and Western rural areas have expressed the same concern. About

54 percent of our grants from fiscal year 2003 have gone to sites in rural areas. More tend to be located in urban areas, as you can imagine, but we're still very concerned these communities have equal fair access to funding.

What I would suggest in your specific case is that we follow up with your staff, and have our Region 7 Brownfield specialists sit down and walk them through the process, and do some outreach and training so they can compete in the next round.

[The information follows:]

#### BROWNFIELDS GRANTS TO RURAL COMMUNITIES

The Agency did a review and determined that about half of last year's grants went to sites in small or rural areas. One hundred sixteen of the 214 grants (54 percent) announced for fiscal year 2003 went to non-urban areas with populations of 100,000 or less. The Agency is concerned that these communities have equal fair access to funding, so we made changes to the fiscal year 2004 application guidelines and are funding outreach forums for small rural communities, including workshops in Kansas City on April 30, Idaho on June 17, and Montana on July 14.

#### NEW SOURCE REVIEW

Senator BOND. We would appreciate that.

I hate to draw this to a close, we are having so much fun, but I am going to ask you one final question on New Source Review, something of course that is not very controversial. I know there are lawsuits. Because of all the changes, there is a lot of uncertainty over how EPA treats ongoing litigation, which was instituted prior to EPA's issuance of the final rule on August 27, 2003 regarding the routine maintenance.

How is EPA addressing this particular litigation issue, and the general issue?

Administrator LEAVITT. Senator, we are committed to making New Source Review work. We believe the rules that we have put forward will ultimately be put in place, despite the fact that there is a current stay. We are enforcing the law and moving forward with the cases that were filed prior. We're filing new cases. We are selecting new cases based on a myriad of different factors, among them being available resources and the desired environmental outcomes.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator BOND. Well, thank you very much, Governor. We are delighted to have you before the committee. Obviously, we have lots of questions and follow-up. We will have additional questions for the record, and we appreciate you and your staff's prompt attention to them.

[The following questions were not asked at the hearing, but were submitted to the Agency for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR CHRISTOPHER S. BOND

##### CLEAN AIR ISSUES

*Question.* The most prominent air quality issue of the last few months has been what to do about emissions from coal-fired electric power plants. I applaud the administration for attacking this issue head on by proposing regulations on New Source Review and Mercury emissions. President Bush has also asked Congress to pass "Clear Skies" or multi-pollutant legislation that would reduce power plant

emissions and encourage investment in new plants by providing certainty regarding future regulatory requirements.

Governor, would you please comment on the status of both the New Source Review and Mercury emissions proposals?

Answer. On October 27, 2003, EPA made final rule changes to the New Source Review (NSR) program. These changes focused on determining what activities at an industrial facility constitute Routine Maintenance, Repair and Replacement and are therefore exempt. The final rule is called the Equipment Replacement Provision. These amendments to the NSR rules would apply only prospectively.

Previously EPA completed final rule changes in December 2002 that removed NSR's barriers to environmentally beneficial projects, created incentives, such as Plantwide Applicability Limits (PALs), for additional beneficial projects, and streamlined the NSR rules.

Some State agencies and environmental groups have filed suit in the DC Circuit Court of Appeals, seeking to overturn the December 2002 and October 2003 rules. Other States and industry groups have intervened in this suit on EPA's behalf. These are complex cases and will likely not be resolved until 2005 or later.

In the meantime, in response to a motion by some State agencies and Environmental Groups, the DC Circuit Court of Appeals stayed the Equipment Replacement Provision on December 24, 2003. However, the DC Circuit denied the petitioners' renewed motion to stay the NSR rules that were promulgated on December 31, 2002, and so EPA continues to implement these rules.

EPA is disappointed in the ruling staying the Equipment Replacement Rule, but we believe that once the court has a chance to review the new rule on its merits, it will lift its stay and eventually uphold the rule.

We are committed to following the court's direction. We believe that both these rules will significantly improve the effectiveness of the NSR program, while preserving its environmental benefits.

In the next several months, EPA will be proposing additional changes to the NSR program. These include additional improvements to simplify the program for complex facilities and to create additional incentives for beneficial projects. (This upcoming package is referred to as the "Debottlenecking, Aggregation, and Allowables PAL package").

EPA is offering aggressive alternatives for controlling mercury from power plants by proposing new environmental regulations. This marks the first time in United States history that power plants would be required to reduce mercury pollution.

Controlling mercury from coal-fired power plants raises many difficult issues with respect to the availability of technology and the impact on our energy markets. We have tried to address those issues in our proposal. We extended the official comment period by 30 days, and the signed documents were available on our website within 48 hours of signature, December 15, 2003. We are now in the process of carefully considering all the comments, and abiding by our commitment in the settlement agreement with NRDC, we expect to issue a final rule by March 15, 2005.

*Question.* Further, how would the passage of "Clear Skies" or multi-pollutant legislation contribute to EPA's ability to reduce power plant emissions in the next 20 years?

Answer. Clear Skies would provide dramatic environmental benefits by reducing emissions from the power sector more than any legislation that any other administration has ever proposed. It does so while allowing the downward trend in energy prices to continue and while promoting energy independence.

One of the most important benefits of Clear Skies is that it would provide both regulatory and environmental certainty. Clear Skies builds on the successes of the Clean Air Act and would significantly improve air quality across the nation by requiring power plants to reduce their emissions of SO<sub>2</sub>, NO<sub>x</sub> and mercury by 70 percent. The mandatory emissions caps at the heart of Clear Skies are a sure thing and guarantee that reductions will be maintained over time. Because cap-and-trade programs include economic incentives for early action, Clear Skies would begin improving public health immediately.

Clear Skies also allows firms to make the reductions in the most cost-effective means possible. The statutory caps in Clear Skies would provide certainty of reductions that could not be delayed by litigation. Without Clear Skies, we also know that, under the current Act, EPA and States will need to develop and issue regulations to reduce power plant emissions, but the levels and timing of these regulations are unknown. Over the next 20 years, uncertainties regarding regulatory development, litigation, implementation time, etc. under the current Act compare unfavorably with the certainty provided by Clear Skies.

## OZONE AIR QUALITY STANDARDS

*Question.* The EPA is required by the Clean Air Act (CAA) to set National Ambient Air Quality Standards (NAAQS) for wide-spread pollutants from numerous and diverse sources considered harmful to public health and the environment. The EPA has set NAAQS for six principal pollutants—ozone is one of these six pollutants.

On April 15th, EPA will designate areas that are in attainment and nonattainment of the 8-hour ozone air quality standard. There is a small rural county in Missouri, Sainte Genevieve, which is in danger of being included with St. Louis in a nonattainment area. This small rural county is not contributing to the region's nonattainment.

Governor, will you please walk us through the process of designating an area in nonattainment of the 8-hour ozone standard? In the case of counties like Sainte Genevieve, how and who is making the final decision on which communities are really contributing to a region's nonattainment status?

*Answer.* Area designations are required after promulgation of a new or revised NAAQS. The EPA works together with appropriate State and local authorities to establish designations. On July 18, 1997, we promulgated a revised ozone standard of 0.08 parts per million (ppm), measured over an 8-hour period, i.e., the 8-hour standard. In March 2000 and July 2000, we issued designation guidance on how to determine the boundaries for nonattainment areas. In that guidance, we rely on the CAA definition of nonattainment as an area that is violating an ambient standard or is contributing to a nearby area that is violating the standard. If an area meets the definition, EPA is obligated to designate the area as nonattainment. In making designations, we use the most recent 3 years of monitoring data. Once we determine a monitor is recording a violation, the next step is to determine if there are any nearby areas that are contributing to the violation and include them in the designated nonattainment area. In making this determination, we review all available technical data such as air quality, source locations and emissions, photochemical modeling, meteorology, terrain, population, commuting, and growth in the area.

On April 15, we finalized designations for all areas of the United States. Ozone air quality monitors in the St. Louis area are in violation of the ozone standard. The St. Louis nonattainment area consists of Franklin, Jefferson, St. Charles, St. Louis Counties and St. Louis City, Missouri, and Jersey, Madison, Monroe, and St. Clair Counties, Illinois.

An ozone monitor is located in Ste. Genevieve County. The design value for this monitor was calculated to be below the standard for the 2001–2003 ozone season. Our initial concern for this county was based on anticipated growth in nitrogen oxide emissions (a precursor of ground-level ozone) and that these emissions may be carried by the prevailing wind into the St. Louis area, contribute to the nonattainment problem, and make it difficult to attain the standard. The State of Missouri provided information to us on the amount of current emissions and the stringency of controls on newly permitted sources in the county. Based on this information, we concluded that the county is not a contributor to nonattainment in the St. Louis area and designated the county as attainment.

## LEAD CONTAMINATION CRISIS

*Question.* I would be remiss if I did not ask you, Governor, to brief us this morning on the lead contamination crisis occurring in the District at this moment.

Sir, will you update the subcommittee on the agency's actions in the wake of discovering elevated levels of lead in the District of Columbia's drinking water?

*Answer.* EPA is very concerned about the current situation related to elevated levels of lead in drinking water in many homes served by the District of Columbia's water system. Exposure to elevated levels of lead can have serious health effects, particularly for children. Therefore, EPA places a high priority on reducing exposure to lead from all sources.

The Agency's main priority at this time is ensuring that all citizens in the District have access to safe drinking water and that citizens nationwide can be confident in the safety of their drinking water.

EPA's Regional office in Philadelphia, which has oversight responsibility for District drinking water, has a number of actions underway to see that the problem is corrected at the local level. The Region has worked with the City to ensure that all potentially affected residents with lead service lines receive filters and is also ensuring that additional monitoring is carried out, public outreach is improved, and replacement of lead service lines is accelerated. The Region has developed a website at [www.epa.gov/dclead](http://www.epa.gov/dclead) to keep the public informed of the activities that are being carried out.

Staff from EPA Regional, national and research offices are participating in a multi-agency technical expert working group to identify a technical solution to the problem. The national office has also facilitated an independent peer review of that group's efforts. Pursuant to the working group's recommendations, a partial system test to assess a new corrosion control treatment method will take place in June. Full implementation of revised corrosion control will take place later in the summer about July 15 if the partial test does not encounter problems.

While the Agency does not anticipate that there is a serious problem nationally, we are collecting data to better understand the occurrence of elevated levels of lead in drinking water. We are also committed to initiating a national review of implementation of, and compliance with, the Federal regulations for lead in drinking water during 2004.

*Question.* Further, how did dangerously high levels of lead in water being delivered to the District's residents remain overlooked for the past year and a half?

*Answer.* The sampling results that the District of Columbia Water and Sewer Authority (WASA) submitted to EPA for the 2000–2001 monitoring period indicated that neither the lead nor copper action level had been exceeded at the 90th percentile. The 90th percentile value reported for lead was 8 parts per billion (ppb).

The optimal corrosion control treatment implemented by the Washington Aqueduct appeared to be effective in minimizing lead levels until the sampling period between July 2001 and June 30, 2002. EPA received a final report from WASA on August 27, 2002 indicating that the 90th percentile value had increased to 75 ppb during that period. The high level required that WASA conduct more frequent monitoring and carry out public education. The lead action level was also exceeded for subsequent monitoring periods in 2003, with 90th percentile values at 40 ppb (January 1 to June 30, 2003) and 63 ppb (July 1 to December 31, 2003).

The action level exceedance for the period ending in June 2002 triggered provisions in the Lead and Copper Rule (LCR) that required WASA to complete the following actions:

- Resume full monitoring for lead and copper at the customers' taps by sampling a minimum of 100 customers taps during subsequent 6-month monitoring periods.
- Prepare and implement a public education program to advise consumers on how to protect themselves from exposure to lead in drinking water and inform them of steps that will be taken to reduce the lead level.
- Develop and undertake a lead service line replacement (LSLR) program. The LCR requires that a system replace 7 percent of the lead service lines which the system owns each year until all of the lines have been replaced, or until tap water monitoring indicates that its 90th percentile lead level is equal to or less than 15 ppb.

WASA began to carry out a public education program in October 2002. However, it is clear now that messages were not heard. Notifications to individual residents were often not timely and did not achieve the goal of getting information to those who needed to know. Mass media tools were not used as effectively as they could have been. There should have been more widespread and urgent communication of the problem District-wide.

In March 2003, WASA began an expanded sampling program to evaluate the lead concentrations leached into water from lead service lines, using a protocol that differed from that used for required tap monitoring. The Region did not receive the sampling results from the lead service line testing program until October 27, 2003. EPA's review of this information by technical staff was focused on determining whether WASA had replaced or tested the required number of lines under their Lead Service Line Replacement Plan, and on how to address the underlying cause of the corrosion problem. The results of this expanded sampling program indicated that the lead problem was more significant and widespread than had been previously understood. Although WASA provided letters with results and instructions to customers whose lines were tested, those communications were not promptly delivered nor were they effective in informing the public of the magnitude of the problem or in conveying the steps families and individuals should take to protect themselves.

EPA, WASA and the Washington Aqueduct continued their research plan to address the cause of the problem. However, WASA should have taken additional measures to ensure that customers were quickly informed, and that public education and outreach materials reflected an appropriate level of concern. Once it became evident that WASA's public education program failed to reach consumers in a way that ensured they would take action to reduce their risks, EPA began working with WASA to improve its communication to the public, and we took direct actions to supplement those efforts. Region III has since undertaken a more thorough review of

WASA's public education efforts to identify specific recommendations for improvement, and have modified their own compliance review procedures to assure that the utilities' public education materials convey both the appropriate sense of urgency and proper, timely information.

*Question.* What exactly is EPA's role in lead's public health crisis?

Answer. EPA's Regional office has primary enforcement authority for the District's drinking water. The Region ensures that the District of Columbia's water suppliers know and understand Federal regulations, provides advice and technical assistance on how to comply with the Federal regulations, requires monitoring of the water and treatment processes according to the Federal regulations, and ensures that required monitoring results are reported. The region can also take an appropriate administrative or judicial enforcement action, including issuing notices of violation or administrative orders and seeking administrative and/or civil penalties.

The Region therefore carries out the role that a State would otherwise carry out in implementing the Federal Lead and Copper Rule. The District's water utilities, the Water and Sewer Authority (WASA) and U.S. Army Corps of Engineer's Washington Aqueduct (Aqueduct) must report the results of monitoring and other activities carried out pursuant to the rule to the Regional office. The Regional office must likewise report certain information required under the rule to the national Safe Drinking Water Information System (SDWIS).

The Region is responsible for evaluating the compliance of WASA and the Aqueduct with the Federal regulation. The Region was responsible for evaluating the corrosion control study presented by the Aqueduct. The Region approved the final treatment selection, after requiring several additional studies, and also approved the required water quality parameters that must be monitored by the Aqueduct and WASA to ensure that corrosion control is effective.

The Region receives the results of required tap monitoring by WASA, determines if the utility is exceeding the action level, and instructs the utility as to the actions required to be carried out under the rule. The Region is currently conducting a thorough review of WASA's compliance with the public education, sampling and lead service line replacement requirements.

With the District government, EPA has directed WASA to provide filters to households with lead service lines, to further expand sampling to assess the extent of the problem of elevated lead levels, to accelerate the physical replacement of lead service lines, and to develop a plan to significantly enhance its public education and outreach activities.

*Question.* What was EPA's normal responsibility for water issues in the District?

Answer. Nationally, EPA's role is to establish health-based standards that are protective of public health, develop guidance to assist States and public water systems, and provide oversight of State drinking water programs that have primary enforcement responsibility for public water systems in their State. Federal regulations designate the Regional Administrator as the entity responsible for implementing the Public Water System Supervision Program when a State has not been granted primary enforcement authority, or primacy, by EPA. The District of Columbia does not have primacy; therefore, the Agency's Regional office in Philadelphia directly implements the drinking water program for the District.

EPA's role includes ensuring that the D.C. water suppliers (D.C. Water and Sewer Authority [WASA] and U.S. Army Corps of Engineer's Washington Aqueduct [Aqueduct]) know and understand Federal regulations; providing advice and technical assistance on how to comply with the Federal regulations; requiring monitoring of the water and treatment processes according to the Federal regulations; and taking appropriate enforcement actions if violations occur.

WASA and the Aqueduct are responsible for carrying out required monitoring of lead. WASA is responsible for overseeing the collection of monitoring samples from customer taps. The Aqueduct and WASA are required to conduct monitoring for water quality parameters at the water treatment plant and in the distribution system, respectively. Both WASA and the Washington Aqueduct are required to report monitoring data and information regarding compliance with maximum contaminant levels, public notification and required treatment techniques to EPA Region III.

#### CONFINED ANIMAL FEEDING OPERATIONS (CAFOs)

*Question.* What is the current policy of EPA as to discharge permitting for confined animal feeding operations? Are the permitting requirements different depending on the size of the operation?

Answer. The majority of animal feeding operations (AFOs) are not concentrated animal feeding operations (CAFOs) and are thus not required to obtain permits. Three categories of CAFOs are recognized in EPA's regulations: large, medium, and



small. Large CAFOs are AFOs that exceed certain production thresholds (e.g., 1,000 beef cattle, 700 mature dairy cows, 2,500 swine over 55 lbs, etc.). All large CAFOs are required to obtain permits except in rare cases where they can demonstrate “no potential to discharge.” In some cases, medium or small AFOs below the production thresholds for large CAFOs may be either defined or designated by the permitting authority as CAFOs and thus be required to obtain permits, but only if they discharge directly to surface waters and are significant contributors of pollutants (see CFR 122.23 for exact definitions of medium and small CAFOs).

EPA requires all operations that are defined or designated as Concentrated Animal Feeding Operations (CAFOs) to apply for NPDES permits. The NPDES permit requirements for all CAFOs include: implementation of a nutrient management plan; submission of annual reports to the permitting authority; maintaining current permits until the operation is completely closed and all manure is removed; and keeping records of nutrient management practices for at least 5 years.

The permit requirements may be different depending on the size of the operation. Large CAFOs are subject to both the effluent limitation guidelines found at 40 CFR 412 and the NPDES regulations found at 40 CFR 122. The medium and small CAFOs must meet the requirements of 40 CFR 122 and effluent limitations based on best professional judgment (BPJ).

#### COMBINED SEWER OVERFLOWS

*Question.* A number of communities have problems with combined sewer overflow where the capacity of the sewer collection and treatment system is exceeded due to high volumes of rainwater or snowmelt. How many urban areas have CSO problems and what is the extent of the problem? What is the Federal role versus the local or State role? What are the potential costs associated with addressing CSO problems?

*Answer.* As of October 2003, 32 States have communities with Combined Sewer Systems (CSS). The approximately 750 communities with CSSs are concentrated in the Northeast and Great Lakes regions. Within these communities there are approximately 9,500 Combined Sewer Overflow (CSO) discharge points that are regulated by 836 NPDES permits.

EPA’s 2001 Report to Congress estimated that CSOs discharge approximately 1.2 trillion gallons per year. The report also estimates that CSO controls have resulted in an approximate 12 percent reduction in untreated CSO volume since 1994 (170 million gallons per year), and biochemical oxygen demand (BOD) loadings were reduced by 125 million pounds per year since 1994.

EPA and the States implement the CSO Control Policy through the National Pollutant Discharge Elimination System (NPDES) permits program. Forty-five States have been authorized to implement the NPDES program. In a limited number of States, EPA is the NPDES authority. When the State is the permitting authority, EPA provides appropriate oversight in accordance with NPDES program requirements. Through NPDES permits or other enforceable mechanisms issued by NPDES authorities, communities with CSOs are required to implement the nine minimum controls identified in the CSO policy and to develop and implement long-term CSO control plans (LTCPs) to meet Clean Water Act requirements and to achieve compliance with applicable State water quality standards.

Based on data from the 2000 Clean Watershed Needs Survey, the estimated total capital cost for CSO control is \$50.6 billion, an increase of \$1.0 billion from the estimated cost in the 1996 Clean Water Needs Survey. This estimate is based on the level of control presented under the “presumption approach” delineated in the 1994 CSO Control Policy (capture for treatment of 85 percent of wet weather flows entering the combined sewer system). Improved costs estimates will be available as more communities develop LTCPs.

#### MTBE

*Question.* MTBE and ethanol are used to meet Clean Air Act requirements that reformulated gas, sold in the Nation’s worst ozone attainment areas, contain at least 2 percent oxygen to improve combustion. Recently, MTBE leaks have been implicated in many instances of ground water contamination. As a result, some 17 States have taken steps to ban or regulate its use and a number of bills have been introduced to address these concerns. What is EPA’s current position on the phase-out of MTBE?

*Answer.* EPA supports the energy bill that is currently pending in Congress and which would call for a phase out of MTBE in gasoline. Because actions taken by individual States to control or ban the use of MTBE as a fuel additive are not uniform or coordinated, they can create concerns about fuel distribution. The provisions

in the energy bill, however, would help to address this situation in several ways. The bill would: (1) maintain the air quality benefits of the clean fuel programs, such as RFG; (2) remove the 2 percent oxygenate requirement under the RFG program; (3) phase out the future use of MTBE across the Nation while allowing sufficient lead time for refiners and MTBE producers to switch production to other gasoline blend stocks; and, (4) implement a Renewable Fuels Standard that encourages positive life cycle renewability through the use of domestically produced renewable fuels through a national credit averaging and trading program.

#### ENVIRONMENTAL ENFORCEMENT AND SECURITY ACT OF 2004

*Question.* I plan to introduce the Environmental Enforcement and Security Act of 2004. This legislation is intended to address concerns raised by a recent EPA IG report, internal EPA reviews and numerous press reports that the EPA is straining to meet its environmental enforcement duties and its new post-9/11 homeland security responsibilities. In particular, the bill will authorize additional funds to add 50 new criminal enforcement special agents and 80 new homeland security special agents. The EPA also would be authorized to fund \$100 million in grants for physical security measures to protect our Nation's water systems. Does EPA have other needs for legislative authority to help the agency meet its homeland security mission?

*Answer.* The Office of Enforcement and Compliance Assurance's (OECA's) criminal enforcement program continues to be a high priority for the Agency. The Agency recognizes the increased demands relating to Homeland Security, and has provided the program with an additional 30 FTE. The increased resources ensure that homeland security activities are not being conducted at the expense of traditional criminal enforcement. This commitment is carried forward into the Fiscal Year 2005 President's Budget request.

We believe we have the tools and resources needed to continue our important work in enforcing environmental laws. Further, the Agency is currently reviewing its responsibilities under HSPD-7 and HSPD-9, and investigating the need for additional legislative authority.

#### SUPERFUND

*Question.* What steps is EPA taking to ensure that more funds are going to clean-up as opposed to administrative functions?

*Answer.* This past November, the Acting Deputy Administrator commissioned a short-term internal study of the Superfund program to identify opportunities to more efficiently deploy Superfund resources within EPA. To that end, EPA is reviewing how Superfund resources are currently being used and what is being accomplished with those resources. An important goal is to identify how more Superfund resources can be dedicated to remedial action constructions by improving the efficiency of the program. The report on the study's findings was made available in late April.

In addition to this study, the EPA Office of the Inspector General (OIG) has initiated its evaluation of Superfund expenditures, as specified in the conference report which accompanies H.R. 2673 (Consolidated Appropriations Act of 2004). Per the conference report, the OIG plans to make recommendations for options to increase resources directed to extramural cleanup while minimizing Superfund administrative costs. The OIG expects to complete its evaluation and respond to the House and Senate Appropriations Committees in December 2004. The OIG's recommendations will be carefully considered and adopted as appropriate.

#### DRINKING WATER SRF AND CLEAN WATER SRF

*Question.* Provide a State-by-State assessment of the use of the Drinking Water and Clean Water SRFs. Are all the funds in use and are the funds targeted to areas with the greatest need? Are there ways to improve utilization of these programs?

*Answer.* The attached charts provide a state-by-state assessment of the use of the Drinking Water State Revolving Fund (DWSRF) and the Clean Water State Revolving Fund (CWSRF). Through June 2003, States have been awarded a total of \$5.5 billion in capitalization grants for the Drinking Water SRF. Twenty-four States are utilizing their Drinking Water SRF funds at or above the national average of 79 percent. As of June 30, 2003, 93 percent of all funds available in the CWSRF are being used to finance needed projects.

States must fund DWSRF projects in accordance with a ranking system that gives priority to projects needed for public health protection and compliance with the Safe Drinking Water Act (SDWA). Forty-two percent of the assistance provided has been specifically for projects to bring water systems into compliance with drinking water

standards. Many of the other DWSRF loans are to assure that systems currently operating in compliance can maintain their operations in compliance with health based standards. EPA, the States, and its partners provide technical and financial assistance to small systems where there is a great need for infrastructure funding. For additional information and specifics, refer to [http://www.epa.gov/safewater/smallsys/pdfs/tfa\\_sdws.pdf](http://www.epa.gov/safewater/smallsys/pdfs/tfa_sdws.pdf).

Although the CWSRF places no statutory oversight requirement for allotment of funds within the States based on need, it requires that each State have a priority list that includes environmental and public health criteria. All publicly owned treatment works projects proposed for CWSRF financing must be on a State's priority list and Intended Use Plan, which are reviewed annually by our regional offices. EPA is committed to helping the States identify and fund their highest priority projects. In our oversight of the CWSRF program, EPA has had no indication that higher priority projects are being delayed in favor of lower priority projects. States do have the authority to fund projects anywhere on their priority lists and may bypass a project if it is not ready to proceed.

States are the primary managers of the SRF programs. EPA works directly with the State programs to continue making incremental improvements in the implementation of the Drinking Water SRF program. EPA conducts regular trainings and conferences on DWSRF program management and facilitates State-to-State idea exchange through participation in the States/EPA SRF workgroup. EPA conducts annual reviews of every State program including management and staff level discussions on best practices for DWSRF program implementation. EPA works with the State programs to address long-term financial performance planning and assists the States with continuing refinement of program management to yield the greatest output of program results.

To improve utilization of the CWSRF, EPA has encouraged States to voluntarily develop integrated planning and priority setting systems which are based on the States' water quality information. So far, 25 States have adopted integrated planning priority setting systems that include nonpoint source and estuary projects. This integrated planning helps to ensure that funding goes to each State's highest environmental projects.

#### ARSENIC

*Question.* What is the extent of the cost and need for communities to reinvest in their water infrastructure in order to comply with EPA's revised arsenic standards?

Answer. EPA estimates that of the 74,000 systems subject to the new arsenic maximum contaminant level, only 3,000 community water systems and 1,100 non-transient, non-community water systems will need to install treatment for compliance. The total national capital costs for treatment technology and infrastructure to meet the arsenic standard are estimated to be almost \$900 million. Small systems make up the majority of the systems affected by the rule, but the majority of the capital costs will be incurred by larger systems that serve more than 10,000 people.

While the compliance date for the revised rule is January 2006, States can give eligible small systems (those serving fewer than 3,300 people) up to the year 2015 (14 years after the rule was promulgated) to come into compliance. This authority will allow States sufficient time to allot portions of their Drinking Water Revolving Fund (DWSRF) over the next several years to systems adding arsenic removal treatment. A fact sheet on the EPA website describes how the DWSRF program can be used to fund capital projects needed to comply with the revised standard. The fact sheet can be found at website <http://www.epa.gov/safewater/dwsrf/fund-arsenic.pdf>.

In October 2001, EPA committed \$20 million to research more cost-effective solutions for removing arsenic from drinking water. One of the key components of this research program is demonstration testing that will be conducted at very small water systems. Under the first round of the demonstration testing, treatment technologies are being installed at 12 water systems throughout the country. For most of these sites, the selected technology was not available at the time the rule was promulgated, so these technologies may be more cost-effective than the technologies that were considered in the rule. The results of this research may reduce some of the infrastructure burden, especially for small systems.

#### CARRYOVER

*Question.* Please provide a list of all funds by program that EPA expects to carry over into fiscal year 2005.

Answer. The chart below estimates the fiscal year 2005 carryover levels for EPA. The estimates are based on the most recent history of funds carried forward by the Agency.

## FISCAL YEAR 2005 CARRYOVER ESTIMATES

[In thousands of dollars]

Appropriation	Estimated Carry-over
Environmental Programs and Management .....	180,000
Science and Technology .....	250,000
Inspector General .....	14,000
Buildings and Facilities .....	6,000
Leaking Underground Storage Tanks .....	5,000
Superfund .....	50,000
Oil .....	4
Federal Insecticide, Fungicide and Rodenticide Act .....	500
State and Tribal Assistance Grants .....	1,400,000

## TOTAL MAXIMUM DAILY LOAD (TMDL)

*Question.* What is the current status of the Total Maximum Daily Load requirements?

Answer. States and EPA are accelerating implementation of the regulations, promulgated in 1985, as amended in 1992. States and EPA have now approved or established more than 10,000 TMDLs, approximately 6,000 of them in the last 2 years in contrast to the less than 1,000 TMDLs established prior to 1999. EPA continues to meet consent decree deadlines established in court orders covering 22 States. States and EPA also continue to work to improve the scientific rigor of the list of waters needing TMDLs, the quality of TMDLs, and to ensure that TMDLs are used to achieve water quality goals by incorporating them in watershed planning processes.

To accomplish these goals EPA has issued guidance to improve the listing process. The guidance recommends that two separate statutory requirements (sections 303(d) and 305(b)) be addressed together to provide an integrated and comprehensive picture of the status of a State's water quality; the integrated report. The guidance also asks States to develop and make public their water quality assessment methodologies. The guidance clarifies that waters do not have to be listed as needing a TMDL if other programs designed to achieve water quality standards are in place and being implemented. EPA has also issued guidance for use of CWA Section 319 funding to ensure that funds are used to develop and implement watershed plans that incorporate completed TMDLs.

## NONPOINT SOURCES OF POLLUTION

*Question.* What is the current status of plans to control nonpoint source pollution? At what point do we expect States to have plans in place? What are the anticipated costs to implement these plans? What are anticipated costs to the various industries, such as mining, farming, agriculture and forestry, to implement adequate plans?

Answer. Since 1990, all States have had approved nonpoint source management programs in place and have received annual appropriations of Section 319 funds to enable them to implement their programs. Of the \$238 million appropriated by Congress in fiscal year 2004, States are using \$100 million of these funds to develop and implement watershed-based plans to restore waters that have been impaired by nonpoint source pollution. EPA anticipates that each year States will develop several watershed-based plans. States will implement the plans by using Section 319 funds, USDA aid, other available Federal funds State funds, and other resources and authorities as needed to successfully address the water quality problems that exist in the watershed. It is anticipated that it will require a number of decades to develop and comprehensively implement plans for all watersheds.

Each plan will be uniquely tailored to the nonpoint source problems that exist in the watershed for which the plan is being developed and implemented. Each watershed is different, often vastly different, from one another, and thus the water quality problems, solutions, and the costs of implementing those solutions will vary widely. In the "Clean Watersheds Needs Survey 2000" published by EPA in August 2003, EPA used two different estimating techniques to estimate total nonpoint source needs. These two estimates provided cumulative national nonpoint source needs of \$13.8 billion and \$21.5 billion. For a variety of reasons explained in that report, both of these figures are regarded as under-estimates due to the unavailability of adequate data to estimate the costs of controlling certain nonpoint source pollution categories.

## QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

## ANNISTON, ALABAMA: CLEAN UP

*Question.* Administrator Leavitt, on January 10, 2002 I sent a letter to your predecessor, Administrator Whitman expressing my concern about the PCB pollution in and around Anniston, Alabama and in April of 2002 the VA-HUD Subcommittee held a hearing to address the issues that the citizens of Anniston, Alabama were facing with respect to the continued pollution and clean-up efforts.

Since that time I have worked with the community, EPA and ATSDR to ensure that the residents of Anniston were cared for, that the clean-up of their community was a priority and that the Federal Government did not obviate big business from its obligations to the current citizens of Anniston and to the future generations who will want to call Anniston home.

Today, I am still concerned about the citizens of Anniston and the pollution that we continue to discover. Widespread PCB contamination remains a constant concern and since we began testing, we now understand that lead contamination is a significant problem in the greater Anniston area as well. It seems as if Anniston was a virtual dumping ground for all sorts of industrial pollution.

I believe that this situation is unacceptable and today my question is the same that it was in April of 2002 when I first asked it—what is the Federal Government doing to clean up this mess and who is being held accountable?

*Answer.* EPA continues to be actively involved in cleanup activities in Anniston for both polychlorinated biphenyl (PCB) and lead contamination.

In March of 2002, EPA filed a complaint against Solutia, Inc. and Pharmacia Corporation in Federal District Court and lodged a Consent Decree partially settling that complaint. The Consent Decree was entered as an Order of the Court on August 4, 2003. The Consent Decree requires the Potentially Responsible Parties (PRPs), under EPA oversight, to conduct cleanups of residential properties and perform a study to determine the full nature and extent of contamination and to evaluate remediation alternatives at the entire Anniston PCB Site.

Residential properties with greater than one part per million of PCBs are required to be cleaned up pursuant to the Consent Decree. To date, the PRPs, with EPA oversight, have cleaned up 27 properties in this condition. The work at 130 properties known to be in need of cleanup is progressing steadily. Additional properties will be identified as sampling progresses.

Although residential cleanups will address a major source of exposure to the citizens, more comprehensive studies of contamination in the Anniston area are needed. The study to determine the nature and extent of contamination and to evaluate alternatives for cleanup is the Remedial Investigation/Feasibility Study (RI/FS). This study is underway. In planning the study, EPA is seeking input from all Federal and State stakeholders, including environmental agencies, public health agencies, and natural resource trustees.

EPA has also discovered a significant number of residential properties contaminated with lead above acceptable levels for residential use. EPA has been cleaning up these properties on a time critical basis as they are identified through ongoing sampling and as resources and time permit. To date, EPA has cleaned up 86 residential properties contaminated with lead. An additional 206 properties contaminated with lead have already been identified and are awaiting cleanup. Enforcement efforts to identify PRPs for the lead contamination are underway. In the past, Anniston was a major center of operations for soil pipe foundries, as well as a number of other industries which may have contributed to widespread lead contamination in the area.

*Question.* Administrator Leavitt, I am most interested in the progress that has been made to mitigate the pollution to date?

*Answer.* To date, the Potentially Responsible Parties (PRPs), with EPA oversight, have cleaned up 27 properties contaminated with PCBs. The cleanup of 130 properties known to be in need of cleanup is progressing steadily. Additional properties will be identified as sampling progresses. In addition, a Remedial Investigation/Feasibility Study is underway to determine the full nature and extent of contamination and to develop cleanup alternatives for consideration. Experts at EPA are working with other Federal agencies (Department of Interior, ATSDR) and our counterparts in the State of Alabama (Alabama Department of Environmental Management, the Department of Conservation and Natural Resources, Geological Survey of Alabama), as well as interested member of the community, to ensure that the study satisfies the needs of all stakeholders.

In addition, EPA has cleaned up 86 residential properties contaminated with lead. An additional 206 properties contaminated with lead have already been identified

and are awaiting cleanup. Enforcement efforts to identify PRPs for the lead contamination are underway. In the past, Anniston was a major center of operations for soil pipe foundries, as well as a number of other industries which may have contributed to widespread lead contamination in the area.

*Question.* One of the concerns originally expressed by the citizens of Anniston was the involvement of Monsanto in the testing and clean-up efforts. If I recall correctly, EPA was to handle, or shall I say oversee, the testing being conducted. I am interested to know specifically what EPA's involvement has been to date, what the current cost estimate of clean-up is, and how long EPA anticipates the cleanup will take.

*Answer.* Under the Consent Decree, the Potentially Responsible Parties (PRPs) provide cleanup related documents, such as sampling plans, to EPA for review, comment, and approval. Additionally, EPA and/or its contractors accompany and oversee the PRPs during sampling and cleanup work.

To date, the PRPs, with EPA oversight, have cleaned up 27 residential properties contaminated with PCBs. The cleanup of an additional 130 residential properties known to be in need of cleanup is progressing steadily. Additional properties will be identified as sampling progresses. It is EPA's understanding that it costs approximately \$30,000 to clean up each contaminated residence. Until all residences needing cleanup are identified, total costs and time required to complete the cleanup cannot be accurately estimated.

To date, EPA has cleaned up 86 residential properties contaminated with lead. An additional 206 properties contaminated with lead have already been identified and are awaiting cleanup. Presently, it costs approximately \$30,000 to clean up each residence. This is similar to the PCB cleanups primarily because the cleanup consists of the same solution; removal of contaminated soil and replacement with clean fill. Until all residences needing cleanup are identified, total costs and time required to complete the cleanup cannot be accurately estimated.

EPA is still in the process of determining the extent of contamination and the time required to address the contamination. The study to determine the nature and extent of contamination is called a Remedial Investigation/Feasibility Study (RI/FS). Based upon the complexity and scope of the RI/FS which includes approximately 40 miles of creeks and waterways, the complete RI/FS may take 2 to 4 years to complete. It is presently envisioned that the RI/FS will be broken into sub-units called operable units. The RI/FS for some operable units will be completed within 2 years, while others will take longer to complete.

When the RI/FS for each operable unit is complete, a remedy will be proposed for public comment. EPA will compile and respond to all public comments. After consideration of public comments, EPA will finalize the remedy in a Record of Decision. It will then be necessary to negotiate a cleanup agreement with the PRPs. Once the cleanup agreement is approved in Federal District Court, the remedy can be implemented. The total time required to complete cleanup activities in Anniston will depend on the remedies selected.

#### ANNISTON, ALABAMA: PCB CONTAMINATION

*Question.* Following the acknowledgment that PCB contamination in Anniston, Alabama was a serious problem that must be addressed, Congress included funding for the Agency for Toxic Substances and Disease Registry (ATSDR) to conduct a study to determine the extent of the problem. Last year, ATSDR found that exposure to PCBs in Anniston posed a serious public health hazard. They recommended that sampling of properties for PCB contamination continue and that rapid clean-up efforts be continued.

Administrator Leavitt, has the EPA taken action on these recommendations? If so, what actions have been taken and what is EPA's anticipated timeline for further activity? If not, why not?

*Answer.* EPA is taking action on ATSDR's recommendations. Pursuant to the Consent Decree, the Potentially Responsible Parties (PRPs) are cleaning up properties known to be in need of cleanup on an expedited basis and are continuing to sample in an effort to identify additional properties for cleanup. EPA consults with ATSDR throughout the Remedial Investigation/Feasibility Study (RI/FS) process. EPA will provide ATSDR copies of all data collected in every media (air, soil, groundwater, sediment, surface water, and biota). EPA will work closely with ATSDR to get input on the most appropriate remedies to protect public health.

#### ANNISTON, ALABAMA: LEAD

*Question.* As I mentioned earlier, lead is another pollutant that has been discovered since testing began in Anniston and surrounding communities. What, if any-

thing, is EPA doing to address the lead problem in Anniston and how does it fit into the larger clean-up efforts currently underway?

Finally, I want to acknowledge that the ATSDR is in the process of conducting a multi-faceted health study spanning nearly 3 years. I hope that the EPA will work with ATSDR to ensure that conclusions and recommendations from this or any other studies are quickly and effectively put into action.

Answer. EPA has also discovered a significant number of residential properties contaminated with lead above acceptable levels for residential use. EPA has been cleaning these properties up on a time critical basis as they are identified through ongoing sampling and as resources and time permit. To date, EPA has cleaned up 86 residential properties contaminated with lead. An additional 206 properties contaminated with lead have already been identified and are awaiting cleanup. There has been some overlap between the Anniston PCB Site and the Anniston Lead Site. Presently, there are a significant number of properties which have both PCB and lead contamination.

Enforcement efforts to identify potentially responsible parties for the lead contamination are underway. In the past, Anniston was a major center of operations for soil pipe foundries, as well as a number of other industries which may have contributed to widespread lead contamination in the area.

As in the past, EPA will continue to work with ATSDR to ensure that required steps are implemented as quickly and effectively as possible. EPA is aware that ATSDR is working through Jacksonville State University (JSU) in Alabama to develop an area wide exposure registry. EPA is also sharing sampling data directly with the JSU.

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#### QUESTIONS SUBMITTED BY SENATOR LARRY CRAIG

##### ARSENIC STANDARD

*Question.* Administrator Leavitt, given that compliance with the new arsenic drinking water standard will financially cripple many towns and small communities in the Intermountain West, what is EPA doing in the following three areas:

- Research into technologies to reduce the cost of compliance?
- Financial assistance to come into compliance? and
- Approval of requests to delay the date of compliance or provide other regulatory relief?

Answer. EPA has undertaken a number of activities to reduce the burden of the arsenic rule on small systems. EPA is helping States, Tribes, and systems prepare for implementation of the arsenic rule by providing training and technical assistance on State and Tribal requirements, treatment technologies, waste disposal, and EPA's small system compliance strategy.

The State can use authority provided by the Safe Drinking Water Act to phase in the arsenic rule over time. This authority will allow States sufficient time to allot portions of their Drinking Water Revolving Fund (DWSRF) over the next several years to systems adding arsenic removal treatment. States can give eligible small systems (those serving fewer than 3,300 people) up to the year 2015 to come into compliance (14 years after the rule was promulgated). States are currently working with EPA on addressing several arsenic compliance exemption requests. For example, Idaho's fiscal year 2004 Intended Use Plan for the DWSRF showed that the State has \$23 million available to provide in drinking water assistance and will receive an additional \$8.3 from the fiscal year 2004 allotment.

Pursuant to a Memorandum of Agreement signed in 2002, EPA is also working with the Rural Utilities Service (RUS) of the Department of Agriculture to target grants and loans for small communities for projects that address arsenic-related treatment upgrades. In fiscal year 2003, 759 water projects were funded by the RUS, which used \$769 million of the Water and Environment Program funds.

The Agency has made a significant investment in small system treatment technologies by allocating \$20 million to fund: (1) the development of small system treatment technologies, (2) small business grants for arsenic treatment research, and (3) the development of specific guidance to help systems choose, operate, and maintain appropriate technologies. Treatment Technology Demonstration projects are taking place in 8 States (Listed below). One project is in the state of Idaho. Additional demonstrations will be selected this year.

The Agency has established a comprehensive research effort to identify new low cost arsenic treatment technologies, document their cost when compared to more traditional technologies and test and document their effectiveness. This research program consists of five elements:

—*Small Business Innovation Research (SBIR) and Science to Achieve Results (STAR).*—Through this effort, the Agency has supported small business development of innovative arsenic removal technologies that could significantly reduce costs for small communities and grants to academic and non-profit institutions to perform exploratory research on arsenic treatment technologies.

—*Treatment Technology Demonstrations.*—The Agency has initiated the full-scale demonstration of commercially ready arsenic treatment technologies at selected small water systems across the Nation. Twelve sites were selected for round one of the demonstration program and 32 additional demonstration sites are currently being considered under round two of the program. The Agency has assured that the demonstration sites are distributed in areas facing high arsenic levels across the Nation including the Intermountain West.

—*Environmental Technology Verification (ETV).*—Under the Agency's Environmental Technology Verification Program, four commercially ready arsenic treatment technologies have been verified: (1) Hydranautics-Reverse Osmosis Membrane Element Module, (2) Kinetico, Inc.—Macrolite Coagulation and Filtration System, (3) Koch Membrane Systems—Reverse Osmosis Membrane Module, (4) Watermark Technologies, Coagulation and Filtration System. Two other adsorptive treatment technologies are currently being tested under this short-term testing program.

—*Enhanced Internal Research.*—Through its in-house research program, the Agency is exploring new methods to identify and predict the occurrence of areas with high arsenic levels in ground water. Research studies are being conducted in Maine and Oklahoma. The goal of this research is to provide tools and information to assist communities in sighting new ground water sources in areas with low arsenic and to possibly re-engineer existing wells, thereby reducing compliance costs by avoiding the need for new add-on treatment.

—*Training and Technical Assistance.*—As research program results are available, Agency scientists and engineers provide information to technical groups, water operators, water systems and others.

Detailed information on the research program is available at [www.epa.gov/ORD/NRMRL/arsenic](http://www.epa.gov/ORD/NRMRL/arsenic). In addition, as directed by the Congressional Appropriations Committee the Agency is completing a report on the status of the Arsenic research program. Also, under the Government Performance and Results Act, the Agency will be completing two key reports on cost and performance of full-scale arsenic treatment technology demonstrations this fiscal year.

#### DEMONSTRATION PROJECTS

Site	Technology To Be Demonstrated
Rimrock, AZ .....	AdEdge Iron Media
Valley Vista, AZ .....	Kinetico Activated Alumina
City of Fruitland, Fruitland, ID .....	Kinetico Ion Exchange
Queen Anne's County, Stevensville, MD .....	Severn Trent Iron Media
Brown City, Brown City, MI .....	Severn Trent Iron Media
Town of Climax, Climax, MN .....	Kinetico Oxidation/Co-Precipitation/Filtration
City of Lidgerwood, Lidgerwood, ND .....	Kinetico Modified Treatment
Holiday Acres Water & Wastewater Service, Allenstown, NH .....	ADI Iron Adsorption/Regeneration
Rollinsford Water & Sewer District, Rollinsford, NH .....	AdEdge Iron Media
Desert Sands Mutual Domestic Water Consumers Association, Inc., Anthony, NM .....	Severn Trent Iron Media
Nambe Pueblo, NM .....	AdEdge Iron Media
South Truckee Meadows GID, Washoe County Water Resources, Reno, NV .....	US Filter Iron Media

#### OMBUDSMAN REVIEW OF BUNKER HILL

*Question.* Today, the EPA Ombudsman released its review of EPA's activities at the Bunker Hill Site in Idaho.

Do you have a reaction to the Ombudsman's findings and could you provide a schedule for providing your response to the recommendations, and when any corrective actions will be implemented?

*Answer.* EPA is in general agreement with the Ombudsman's findings. The report contained recommendations for EPA regarding dissemination of information on the site, the Basin Commission, and the Lake Coeur d'Alene Management Plan. EPA has 90 days from the report date (March 24, 2004) to provide a written response to the report recommendations. We will provide a response to the specific rec-



ommendations before June 23, 2004. We have already started to implement the report recommendations and expect to act on all of the recommendations by June 2004.

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QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

ARSENIC STANDARDS

*Question.* Mr. Leavitt, as you are aware, new EPA arsenic Federal drinking water regulations will take effect in 2006. The EPA estimates that roughly 97 percent of the systems expected to exceed the standard are small systems, those serving 10,000 people or less.

The new standard is estimated to cost small communities \$600 million annually and require \$5 billion in capital outlays. For some households, necessary infrastructure upgrades will raise water prices to over \$100 per month.

These small communities lack the economies of scale present in larger communities and are less able to spread out costs. Furthermore, small and rural communities have lower than median incomes. These two factors result in a greater per capita cost of compliance coupled with a decreased ability to pay for the improvements. Mr. Leavitt, implementing the impending EPA arsenic regulation will cause great financial hardship to our small and rural communities.

Mr. Leavitt, many citizens of my home State of New Mexico live in rural areas and have lower than average incomes. As such, the burden complying with these standards is great. Implementing the new standards will cost rural New Mexicans between \$370 and \$440 million in capital outlays plus \$18 million per year in operating costs.

What plans does the EPA have to help small and rural communities pay for the billion of dollars in upgrades necessary to comply with the arsenic standards?

*Answer.* EPA understands that many communities will face a challenge in carrying out the new arsenic standard. The Agency has a number of activities underway to provide financial, technical and compliance assistance and to identify new technologies that may serve to be more affordable for small systems.

EPA estimates that of the 74,000 systems subject to the new arsenic maximum contaminant level, only 3,000 community water systems and 1,100 non-transient, non-community water systems will need to install treatment for compliance. The total national capital costs for treatment technology and infrastructure to meet the arsenic standard are estimated to be almost \$900 million. Small systems make up the majority of the systems impacted by the rule, but the majority of the capital costs will be incurred by larger systems that serve more than 10,000 people.

EPA's Drinking Water State Revolving Fund (DWSRF) program will play an important role in helping many systems install treatment needed to protect the health of their customers. State DWSRF programs are currently providing more than \$1.2 billion per year using annual appropriations of \$850 million, bond proceeds, repayments and additional funds. More than 40 percent of the funding and 75 percent of the loan agreements are going to small systems that serve fewer than 10,000. The low-interest loans and disadvantaged assistance provided through the program will prove critical in helping States address needy communities. Some States, like Arizona, are already beginning to fund projects for arsenic. Close to one-half of the top 30 projects on the State's priority funding list for 2004 address arsenic treatment. Pursuant to a Memorandum of Agreement signed in 2002, EPA is also working with the Rural Utilities Service (RUS) of the Department of Agriculture to target grants and loans for small communities for projects that address arsenic-related treatment upgrades.

States can use authority provided by the Safe Drinking Water Act to phase in the arsenic rule over time. This authority will allow States sufficient time to provide DWSRF assistance over the next several years to systems adding arsenic removal treatment. States can give eligible small systems (those serving fewer than 3,300 people) up to the year 2015 (14 years after the rule was promulgated) to come into compliance.

The Agency has made a significant investment in small system treatment technologies by allocating \$20 million to fund: (1) the development of small system treatment technologies, (2) small business grants for arsenic treatment research, and (3) the development of specific guidance to help systems choose, operate, and maintain appropriate technologies. Treatment Technology demonstration projects are taking place in 9 States (listed below). Two sites in New Mexico were chosen: Desert Sands MDWCA in Anthony, New Mexico and the Tribal system at Pueblo of Nambe. Addi-

tional demonstrations will be selected this year. The table on the following page highlights some of the technologies being tested and their locations.

Finally, EPA Region 6 is working through the University of New Mexico Environmental Finance Center to conduct pilot studies for arsenic removal at three small tribal New Mexico water systems. The technologies being tested, adsorbent media operated without pH adjustment or regeneration, require minimal operator training.

#### ARSENIC TREATMENT TECHNOLOGY DEMONSTRATIONS

Site	Technology To Be Demonstrated
Rimrock, AZ .....	AdEdge Iron Media
Valley Vista, AZ .....	Kinetico Activated Alumina
City of Fruitland, Fruitland, ID .....	Kinetico Ion Exchange
Queen Anne's County, Stevensville, MD .....	Severn Trent Iron Media
Brown City, Brown City, MI .....	Severn Trent Iron Media
Town of Climax, Climax, MN .....	Kinetico Oxidation/Co-Precipitation/Filtration
City of Lidgerwood, Lidgerwood, ND .....	Kinetico Modified Treatment
Holiday Acres Water & Wastewater Service, Allentown, NH .....	ADI Iron Adsorption/Regeneration
Rollinsford Water & Sewer District, Rollinsford, NH .....	AdEdge Iron Media
Desert Sands Mutual Domestic Water Consumers Association, Inc., Anthony, NM.	Severn Trent Iron Media
Nambe Pueblo, NM .....	AdEdge Iron Media
South Truckee Meadows GID Washoe County Water Resources, Reno, NV .....	US Filter Iron Media

*Question.* Last year, the Federal Government appropriated over \$2.6 billion for water infrastructure funding. Do you believe that the Federal Government should also provide funding to States and municipalities so that they can comply with EPA mandated arsenic standards?

*Answer.* EPA has promoted use of the DWSRF program that, along with Federal funding, leverages much more investment to help States and communities comply with the arsenic standard and other recent rules. In fact, many States are beginning to fund arsenic-related projects in anticipation of the 2006 compliance deadline. The program has a fact sheet that highlights how it can be used to help systems comply with the revised standard (<http://www.epa.gov/safewater/dwsrf/fund-arsenic.pdf>).

The Agency has also made a significant investment in small system treatment technologies by allocating \$20 million to fund: (1) the development of small system treatment technologies, (2) small business grants for arsenic treatment research, and (3) the development of specific guidance to help systems choose, operate, and maintain appropriate technologies. Treatment Technology demonstration projects are taking place in 9 States (listed below). Two of the projects are in the State of New Mexico. Additional demonstrations will be selected this year.

#### DEMONSTRATION PROJECTS

Rimrock, AZ .....	AdEdge Iron Media
Valley Vista, AZ .....	Kinetico Activated Alumina
City of Fruitland, Fruitland, ID .....	Kinetico Ion Exchange
Queen Anne's County, Stevensville, MD .....	Severn Trent Iron Media
Brown City, Brown City, MI .....	Severn Trent Iron Media
Town of Climax, Climax, MN .....	Kinetico Oxidation/Co-Precipitation/Filtration
City of Lidgerwood, Lidgerwood, ND .....	Kinetico Modified Treatment
Holiday Acres Water & Wastewater Service, Allentown, NH .....	ADI Iron Adsorption/Regeneration
Rollinsford Water & Sewer District, Rollinsford, NH .....	AdEdge Iron Media
Desert Sands Mutual Domestic Water Consumers Association, Inc., Anthony, NM.	Severn Trent Iron Media
Nambe Pueblo, NM .....	AdEdge Iron Media
South Truckee Meadows GID Washoe County Water Resources, Reno, NV .....	US Filter Iron Media

#### SAFE DRINKING WATER ACT

*Question.* As with arsenic, small and rural communities will soon be required to meet Safe Drinking Water Act minimum standards for other contaminants. EPA promulgated minimum parts per billion (ppb) standards for other contaminants such

as uranium, perchlorate, radon, and MTBE which will also be very costly to small and rural communities are just down the pike.

The financial hardship borne by small communities in implementing the arsenic and other EPA standards will be significant. Operators of many rural water systems with whom I have spoken said they will not be able to afford these costly upgrades.

Do you anticipate having a widely accepted and scientifically sound review which will justify the expenditure of billions of dollars by small communities before promulgating new minimum standards?

Answer. EPA understands the challenges that small and rural communities face in implementing new drinking water regulations needed to protect public health. The 1996 Amendments to the Safe Drinking Water Act (SDWA) anticipated the challenge water systems would face to implement revised public health standards, and created a suite of tools, including the Drinking Water State Revolving Fund (DWSRF), to help systems successfully meet these challenges. Other available tools include varying compliance time frames through technical assistance, and funding through the Rural Utilities Service (RUS) of the U.S. Department of Agriculture. Together, the State DWSRF programs and RUS provide more than \$2 billion to public water systems for capital improvements and infrastructure needs. We will use these and other tools to help mitigate and minimize impacts that new standards may have on small communities.

With respect to the specific regulations referenced in your question, EPA promulgated National Primary Drinking Water Regulations for uranium in 2000, and arsenic in 2001. EPA has not promulgated final standards for radon, nor has the Agency made the determination that a regulation is appropriate for perchlorate or MTBE.

Before the Agency develops a standard to limit the amount of a substance in public drinking water systems, EPA is required by the SDWA to make specific determinations about the contaminant in drinking water. First, EPA must determine that it occurs at both a frequency and level which represents a public health concern, and second, that regulating the contaminant represents a "meaningful opportunity for health risk reduction" for persons served by public water systems. Once a determination is made to regulate a contaminant, EPA develops a regulation using the best available, peer reviewed science in accordance with sound and objective scientific practices. Both the scientific and economic analyses underlying the rule undergo a thorough review.

Stakeholder involvement and understanding is a key component of the regulatory development process. In addition to providing the opportunity for public comment in the Federal Register, the Agency holds stakeholder meetings to discuss EPA's plans and progress and makes draft documents available for comment. This includes obtaining stakeholder input on costs and benefits for any rule being developed. EPA often consults with the experts through formal and informal expert review processes and considers comments from these groups in the preparation of the final documents. In addition, major scientific work products supporting EPA's rules receive formal peer review to ensure that they are scientifically sound.

*Question.* Do you believe that the Federal Government should also provide funding to States and municipalities so that they can comply with any additional drinking water standards promulgated by the EPA?

Answer. Congress appropriated \$845 million (incorporates the Omnibus Appropriation's 0.59 percent rescission across all budget line items) for the DWSRF program in the fiscal year 2004 budget. The DWSRF is the primary vehicle by which EPA helps States address water system infrastructure upgrades that are needed to protect public health and ensure compliance with the Safe Drinking Water Act (SDWA). Through the auspices of the States, the program is focused on providing low-interest assistance and, where appropriate, additional subsidies to disadvantaged communities for high priority projects. Through fiscal year 2003, EPA has awarded over \$5.5 billion to States for needed drinking water system projects and, as previously mentioned, in fiscal year 2004, Congress appropriated \$845 million for the DWSRF. The administration recognizes the critical role that the DWSRF plays in water infrastructure investment and has committed to fund the program at a level of \$850 million annually through 2018. States are also coordinating funding with the Rural Utilities Service of the U.S. Department of Agriculture to address the special needs of smaller communities.

EPA has promoted use of the DWSRF program to address new and existing drinking water standards. The program's website includes fact sheets that explain how the DWSRF can be used to address projects needed to comply with recent rules including the Stage 1 Disinfectants and Disinfection Byproducts, Long Term 1 Enhanced Surface Water Treatment, Arsenic and Radionuclides Rules (see <http://www.epa.gov/safewater/dwsrf.html>).

## WATER INFRASTRUCTURE NEEDS

*Question.* In many communities along the U.S.-Mexico border, the water infrastructure needs have reached critical levels. Rapid and dense population growth along the border without the installation of adequate water and sewage systems has resulted in contamination of drinking water and sewage spewing down city streets. The people populating these border communities are truly living in squalor.

In order to address the chronic environmental infrastructure deficit that exists along the border region, Congress established the Border Environment Infrastructure Fund. This fund ensures that border communities have access to a safe and reliable water supply and do not face the health dangers associated with human waste.

In recent years, funding for this program has decreased significantly. This has resulted in an inability of border communities to meet their water infrastructure needs.

Do you believe that the Federal Government should provide our border communities with funding for critical water infrastructure through the continued funding of the U.S.-Mexico Border Infrastructure Program?

*Answer.* The Agency's fiscal year 2005 budget request of \$50 million reflects our continued commitment to providing funding for critical water and wastewater infrastructure projects along the U.S.-Mexico Border. This request will allow continuation of EPA participation in border infrastructure funding through fiscal year 2005 at roughly the current pace. As of fiscal year 2004, Congress has appropriated over \$700 million to the U.S.-Mexico Border program. Projects that are currently under construction or are operational have a total value of over \$1.4 billion.

## QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

## MERCURY RULE REQUIREMENTS

*Question.* The administration has repeatedly asserted that the reason they have retreated from a more aggressive mercury regulation that is inline with the Clean Air Act MACT requirements is that the technology is not available to reduce mercury emissions further. This contradicts recent industry reports and statements where they say the opposite is true. Last year, the American Coal Council's magazine included an article talking about the effectiveness of existing technology in reducing mercury emissions. An industry representative testified before the House Energy and Commerce Committee last year that these technologies show "promising results." The fact is that tests already have shown we can reach a 90 percent reduction. We can also do it much more quickly than the administration's proposal requires. A recent report in the Washington Post quotes industry experts as saying that there could be industry-wide application of new technologies by 2009. Please explain why the administration chose a longer timeline.

*Answer.* The Clean Air Act requires emissions limitations based on the average achieved by the best performing 12 percent of existing sources. Further, the U.S. Environmental Protection Agency (EPA) does not believe that electric utility, coal, and pollution control industry statements contradict its view that advanced mercury control technologies are not yet ready for commercialization. The EPA agrees with industry that these new technologies show great promise, but are not, and will not be, available within a 3- to 4-year time-frame. Our belief is based on the following points:

- To date, there have been four full-scale field tests on activated carbon injection (ACI), the most promising mercury-specific control technology on the near-term horizon. These tests have been conducted on three bituminous-fired units and one subbituminous-fired unit. The longest period of continuous ACI operation was conducted for a 9-day period at one unit and for 4- to 5-day periods at the other three units. The short duration of continuous ACI operation at this limited number of units is insufficient to conclude that ACI technology can be used to comply with a national standard that requires continuous compliance for the remainder of the life of the unit.
- The initial four tests provided information that ACI could be effective on both Eastern bituminous coals and Western sub-bituminous coals for short periods of time, with removal ranging from 70 percent for Western coals to 90 percent for Eastern bituminous coals. To provide additional, longer-term information on ACI performance, the DOE has contracted with ALSTOM and ADA-ES (the ACI technology firm with the most current experience in the field) to conduct ACI tests on four additional coal-fired power plants over a 3-year period for longer duration tests. The testing will provide a better understanding of the

performance capabilities of power plants that could be impacted by the pending regulations by addressing questions remaining following the four initial tests, such as the effectiveness of the technology on other coal/boiler/activated powdered carbon combinations, the capture of activated carbon in small and moderate size electrostatic precipitators (ESP), integrated performance with flue gas desulfurization (FGD), mercury removal on sub-bituminous coals with dry scrubbers, process and equipment costs for various levels of mercury removal, plant impacts such as by-product contamination, and the relationship between chlorine content and mercury removal levels.

- One long-term ACI test was initiated in April 2003 on a bituminous-fired unit. This test was to evaluate the mercury removal efficiency of ACI over a period of several months to 1 year, further assess the impact of ACI on balance-of-plant operations (i.e., how will ACI impact maintenance frequency and costs, ash disposal and utilization, internal plant energy use, etc.), and provide additional information on design characteristics and costs of ACI technology for other installations. Because of problems encountered, this test has not been completed and thus the final results are not known. However, it is our understanding that this test has shown the ability of ACI, when used at a bituminous-fired unit, to average 86 percent mercury removal over an extended period of time but has highlighted design problems that must be corrected prior to full scale installation on other units.
- Additional ACI testing has been conducted on less than full-scale operations at a limited number of other sites. However, these tests were also of short duration and provide little additional information on how ACI will perform on a long-term continuous basis.
- To date, no ACI testing has been conducted on a coal-fired unit equipped with a wet FGD system for sulfur dioxide removal. Wet FGD systems are currently installed on approximately 13 percent of the coal-fired units in the United States; this percentage will increase as units are brought into compliance with the proposed Clean Air Interstate Rule (previously called the Interstate Air Quality Rule). As it is impractical to install ACI downstream of the wet FGD (because of the saturated flue gas stream), such installations would have to be installed upstream, where existing ESP units are now placed. It is not known what impact ACI will have on the operation of the wet FGD. (For example, no particulate control device is 100 percent efficient; therefore, it is likely that some activated carbon will enter the wet FGD system.) Tests are currently ongoing on ACI on a wet-FGD equipped unit firing medium-sulfur bituminous coal with another test planned for spring 2005 on a unit firing high-sulfur bituminous coal.
- On April 21, 2004, the U.S. Department of Energy (DOE) made a joint announcement with WE Energies about the initiation of a joint venture aimed at demonstrating technology that will achieve a 90 percent reduction in mercury emissions from coal-based power plants. This 5-year project will involve the design, installation, operation, and evaluation of an integrated system on one coal-fired power plant to control emissions of mercury, particulate matter, sulfur dioxide, and nitrogen oxides.
- The electric utility industry reportedly has had trouble obtaining solid, guaranteed quotes for ACI installation on coal-fired units. We have heard from a number of utility companies indicating that they have tried without success to get bids on, and guarantees for, ACI installations. To date, we are aware of only one permit, other than a federally co-funded program (on a unit to commence operation in 2007 and burn low-sulfur Western coal), that has been issued that included ACI technology (MidAmerican Energy Station permit issued by the Iowa Department of Natural Resources). The lack of additional examples is indicative of the lack of industry confidence in guaranteeing permit levels at this time.

Thus, we conclude that 90 percent emissions reduction is not yet achievable on a long-term basis for all coal types, and ACI is not ready for wide-spread commercial installation on coal-fired electric utility units in a shorter time-frame than the EPA has outlined in its proposed regulations. We anticipate that our regulations will serve as a driver to ensure that ACI (and/or other hybrid sorbent technologies) is developed in a more timely manner than would otherwise be the case.

*Question.* Also, please provide the EPA analysis that was conducted to determine reduction targets over the timeframe in the proposed rule and detail what additional analysis the Agency will do before finalizing the rule this year.

*Answer.* As part of the analysis for the proposed rule EPA carefully studied the availability of various mercury-control technologies and the timeframe for achieving reduction targets. This analysis is documented in the proposed rule and can also be

found at <http://www.epa.gov/air/mercuryrule/>. A detailed discussion of the Phase 1 and Phase 2 caps is given in proposed rule (See page 4698 and 4699 of Volume 69 of the Federal Register). The proposed rule reads:

“Our proposed 15 ton cap in 2018 is grounded largely in the modeling completed in support of the President’s Clear Skies initiative. This modeling suggests that, assuming technologies such as ACI become available; such a cap will create an incentive for certain plants to install these newer technologies. It also suggests that such market-based controls should not have any significant impact on power availability, reliability, or pricing. Nor should a 15-ton cap cause any significant shift in the fuels currently utilized by power plants or in the source of these fuels. Sensitivity analyses indicate that a more stringent cap could have potentially significant impacts on fuels and/or power availability, reliability, or pricing. Less stringent caps do not appear warranted based on our expectations about technology development and our modeling analysis of the potential impacts of the 15-ton cap.”

This is an ongoing process and we will use the most current information available when working to finalize the Clean Air Mercury Rule, including a careful study of the information that we receive during the comment period for the proposed rule. Since we are still in the comment period, it would be premature to speculate on how new information received will affect our analysis prior to finalizing the rule in March 2005.

*Question.* Recent reports from the Department of Energy estimate that the power industry proposes to build, and put into service by 2010, at least 94 new coal-fired power plants across the United States. These power plants will generate enough energy to power 62 million homes, and add an additional 120 million cubic feet of emission gases. Based on the geographic distribution of these plants, there about 28 plants situated in the midwest and northeast, the area from which most of Vermont’s mercury air pollution blows in from. What requirements these plants will have to control mercury under the Clean Air Act and if any of the latest technologies—like activated carbon injection—will be used to control mercury emissions from these plants?

*Answer.* In March 2005 EPA will issue a final regulation that will require reductions of mercury emissions from power plants either under Section 111 or Section 112 of the Clean Air Act. Depending on the part of the Clean Air Act chosen, the regulations will either take the form of a cap-and-trade program or a Maximum Achievable Control Technology (MACT) standard. EPA’s preferred alternative is a cap-and-trade program under Section 111.

One of the key advantages of a cap-and-trade program is that pollution is reduced even as the economy expands and new power plants are built. Traditional standards such as MACT standards require reductions in emissions at each power plant but not necessarily overall for a growing industry because the emissions from additional power plants exceed the reductions required at existing power plants. This is one reason why EPA prefers the cap-and-trade approach outlined in the proposed Clean Air Mercury Rule of 2004.

Under either the MACT or the cap-and-trade approach EPA will not mandate particular technologies. The choice of technologies is best left to the regulated industry, provided they lead to the ultimate emissions reductions required by EPA. There are a number of promising technologies, such as activated carbon injection (ACI), which are being developed and tested. Based on current information it is projected that ACI technology will be adequately demonstrated and widely deployable sometime after 2010 and that removal levels in the 70 percent to 90 percent range could be achievable. The regulated sector, not EPA, will make the final decision about what technologies are actually employed to achieve the emissions reductions that will be required.

*Question.* Is the Agency preparing any new guidance for States that would limit their ability to require or even consider that new coal-fired power plants use the best available control technology, including advanced systems like Integrated Gasification Combined Cycle and fluidized-bed combustion?

*Answer.* No, the Agency is not planning to prepare any additional guidance which would limit a State’s ability to require or consider new coal-fired power plants use of the best available control technology.

#### SUBCOMMITTEE RECESS

Senator BOND. We look forward to working with you on an ongoing basis, and we appreciate the cooperation that your staff has

shown us in the past, and look forward to continuing to work with you in the future. The hearing is recessed.

[Whereupon, at 11:44 a.m., Thursday, March 25, the subcommittee was recessed, to reconvene subject to the call of the Chair.]